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In The

Supreme Court of the United States

OCTOBER TERM, 1968

No. 610

UNITED STATES OF AMERICA and LIEUTENANT STANLEY D. SCHUMAN, U. S. N., a member of the armed forces of the United States on active military service not a resident of or domiciled in the State of Connecticut, suing on behalf of himself and all servicemen or former servicemen similiarly situated and affected,

Appellees,

— v. —

JOHN L. SULLIVAN, Tax Commissioner of the State of Connecticut; GERALD A. LAMB, Treasurer of the State of Connecticut; LOUIS I. GLADSTONE, Comptroller of the State of Connecticut; and ROBERT K. KILLIAN, Attorney General of the State of Connecticut,

Appellants.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JURISDICTIONAL STATEMENT

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Dated: October 7, 1968

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Appellants.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JURISDICTIONAL STATEMENT

Appellants, officials of the State of Connecticut, appeal from the final judgment of the United States Court of Appeals for the Second Circuit affirming the judgment of the United States District Court for the District of Connecticut, as amended. This Statement is submitted to demonstrate that the Supreme Court of the United States has jurisdiction to con-

sider the appeal, and that substantial questions are presented therein.

OPINIONS BELOW

The decision appealed from is reported in F2d (1968). A copy of said decision appears in the Appendix, beginning at page 1A.

The decision of the United States District Court of Connecticut is reported in 270 F. Supp. 236 (1967). A copy of said decision appears in the Appendix, beginning at page 14A.

GROUNDS OF JURISDICTION

Suit was instituted in the United States District Court for the District of Connecticut by the United States States of America and Lieutenant Stanley D. Schuman, U.S.N., against various officials of the State of Connecticut to determine whether imposition and collection of the Connecticut Sales and Use Tax[1] contravened Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940 as amended. 50 U.S.C. App. Sec. 574.

Federal jurisdiction for the United States of America as a party plaintiff is based on 28 U.S.C. Sec. 1345. The District Court dismissed Lieutenant Schuman's claim for lack of jurisdiction, from which no appeal was taken.

The District Court awarded summary judgment to the United States but by amendment to its judgment stipulated to by the parties Connecticut was permitted, subject to refund, to continue to collect the disputed taxes pending the ultimate determination of the case on appeal.

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[1]Officially referred to as the Education, Welfare and Public Health Tax, Conn. Gen. Stat. (Rev. 1958) as amended. Ch. 219, Sections 12-406-12-432(a).

This decision was affirmed by the United States Court of Appeals for the Second Circuit and judgment rendered on July 10, 1968. Notice of Appeal was filed in the United States Court of Appeals for the Second Circuit on July 30, 1968.

The appeal is taken pursuant to 28 U.S.C. Sec. 1254(2) and is supported by the case of *City of Detroit, et al vs. The Murray Corporation of America*, 355 U.S. 489, 2L. Ed. 2d, 441, 78 S. Ct. 458 (1958).

In that case, the City of Detroit adopted a personal property tax which was levied on owners or possessors of personal property. The tax was imposed and collected on property in the possession of Murray, a subcontractor on a United States Government project, even though title to the property was in the United States.

Murray and the United States claimed the tax contravened the Federal Constitution on the basis of the tax immunity of the Government and were successful in both the Federal District Court and the Court of Appeals.

The Supreme Court of the United States determined that it was a proper case for appeal pursuant to 28 U.S.C. 1254(2).

In the instant case the situation is very similar to that in *Detroit* v. *Murray*, supra.

Here the Government is claiming immunity from a state tax law for certain servicemen on the basis of a federal law.

Both the District Court of Connecticut and the Court of Appeals for the Second Circuit have decided the imposition and collection of the tax is repugnant to the federal law.

We, therefore, respectfully submit that this is a proper appeal pursuant to 28 U.S.C. 1254(2).

Statutes Involved

Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, (50 U.S.C. App. 1964 Ed., Sec. 574) is set forth in the Appendix, beginning at page 29A.

Education, Welfare and Public Health Tax Act (commonly referred to as the Sales and Use Tax Act), Conn. Gen. Stat. (Rev. 1958) as amended, Ch. 219, Secs. 12-406 to 12-432(a)., is set forth in the Appendix at page 31A.

Questions Presented

1. Whether the imposition and collection of the Connecticut Sales and Use taxes on the purchase or use of tangible personal property in Connecticut by non-resident military personnel stationed in Connecticut pursuant to military orders contravenes Sec. 514 of the Soldiers' and Sailors' Civil Relief Act?

2. Whether Section 514 of the Soldiers' and Sailors' Civil Relief Act, as interpreted by the Court of Appeals for the Second Circuit, is an unconstitutional infringement upon the reserved power of the states to lay and collect taxes?

STATEMENT OF THE CASE

Since 1947 the State of Connecticut has imposed sales and use taxes on the purchase or use of tangible personal property in Connecticut by non-resident military personnel stationed in this State pursuant to military orders.

While in Connecticut pursuant to military orders, Lieut. Stanley D. Schuman, U.S.N., purchased a pleasure boat in Connecticut. On April 15, 1966, Lieut. Schuman paid to Connecticut under protest a tax on the casual purchase and

use of said pleasure boat pursuant to Conn. Gen. Stat. (Rev. of 1958) Sec. 12-431.

On April 21, 1966, Lieut. Schuman and the United States of America, as representative of the class of all servicemen, instituted this action in the United States District Court of Connecticut. Summary judgment was requested, declaring that Sec. 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, (hereinafter referred to as the Act) immunized non-resident servicemen stationed in Conncticut from paying sales and use taxes.

Sec. 514 of the Soldiers' and Sailors' Civil Relief Act effectively granted non-resident servicemen immunity from state income and personal property taxes. The question presented was whether the Congress intended the Act to encompass sales and use taxes.

The District Court dismissed Lieut. Schuman's claim for want of jurisdiction but awarded summary judgment to the United States, permitting, however, the State of Connecticut to continue collecting the disputed taxes, subject to refund, from non-resident servicemen until the ultimate determination of this case.

The questions presented are so substantial that they require plenary consideration, with briefs on the merits and oral argument.

Substantiality of Questions Presented

A. This is a case of first impression before this Court.

In 1942 Congress first enacted Sec. 514 of the Soldiers' and Sailors' Civil Relief Act. Until the present case, neither the Supreme Court of the United States nor any other court

has had an opportunity to consider the question of whether the Act extends to nonresident servicemen immunity from sales and use taxes.

B. The cases cited by the Lower Court do not support its opinion.

Cases interpreting Sec. 514 of the Act are few. The principal cases interpreting Sec. 514 and the major cases relied upon by the Court of Appeals in arriving at its decision are *Dameron* v. *Brodhead* and *California* v. *Buzard*.

In *Dameron* v. *Brodhead*, 345 U. S. 322, (1952) the issue did not involve a sales or use tax. The Court simply decided that under the Act a *personal property tax* could not be imposed on a nonresident serviceman by the state of military station irrespective of whether the domiciliary state imposed a similar tax on that property.

In *California* v. *Buzard*, 382 U. S. 386 (1966), the Court did not have an opportunity to consider the Act and its relation to a sales and use tax. That case was a criminal case involving refusal to pay an *annual license fee* on an automobile, which fee was specially enacted to replace local ad valorem taxation of automobiles in California. The California sales and use tax act was not in issue before the Court.

In both decisions this Court emphasized that Sec. 514 of the Soldiers' and Sailors' Relief Act of 1940, as amended, provided a nonresident serviceman present in a state in compliance with military orders with a broad immunity from the state's *personal property* and *income taxation* and that the Act should be liberally construed within the framework of the immunity specifically granted. In neither case did this Court use language which would warrant the application of such liberal construction for the purpose of extending the scope of tax immunity by implication to sales and use taxes. Such ex-

tension should be delineated by congress, which has established the present limits.

C. Legislative history of Sec. 514.

In interpreting the Act, the Court of Appeals found no direction in the legislative history since it is silent with respect to sales and use taxes. We respectfully submit, in consistently referring to the scope of the Act to include *property* and *income taxes*[2] Congress clearly circumscribed the scope of the immunity granted.

Congress evidenced its recognition of *sales and use taxation* as a distinct type of taxation in the Buck Act, 4 U.S.C. 104-110 (1940). There, in legislation enacted in the same year as the Soldiers' and Sailors' Civil Relief Act, Congress specifically permitted *income taxation* and *sales and use taxation* by states in a federal enclave. On this basis, we submit by consistent enumeration of *property tax* and *income tax* immunity in the legislative history of the Soldiers' and Sailors' Civil Relief Act, Congress clearly indicated its will not to grant immunity from *sales and use taxes*.

D. The decision is of national importance.

As a result of the lower Court decision, Connecticut, along with most of the forty-four other states relying on sales and use tax revenue, will face a loss of essential revenue and a disproportionate disruption of the orderly administration of tax collection.

The sales and use tax is Connecticut's greatest revenue producer. Athough the lower Court decision removes only a small segment of taxpayers from its purview, it will thoroughly disrupt the entire system of taxation.

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[2]See S. Rep. No. 959, 78th Cong., 2d Sess. 1 (1944) See Appendix, Page 73A; H. R. Rep. No. 1514, 78th Cong., 2d Sess. 2 (1944) See Appendix, Page 82A.

Retailers responsible for collection of the tax[3] must not only satisfy themselves that the purchaser is a serviceman stationed in Connecticut, domiciled elsewhere and on active duty, but they must further retain sufficient proof to satisfy their burden of proving to the State of Connecticut that the sale was free from tax.

Unfortunately, the detrimental effects to Connecticut and the other states does not end there. Since the lower Court's decision was partially grounded on the language of Sec. 514 (1) "taxation in respect of . . . personal property", subsequent judicial opinions might well extend the decision to afford immunity to non resident servicemen from the state's cigarette tax upon the purchase of cigarettes, the state's alcohol tax upon the purchase of alcohol, and the state's gasoline tax upon the purchase of gasoline.

E. The constitutionality of Sec. 514 as interpreted by the lower Court is in doubt.

The issue of the constitutionality of Sec. 514 of the Act was placed before this Court in *Dameron* v. *Brodhead*, 345 U.S. 322 (1952).

Brodhead alleged Sec. 514 was unconstitutional on the ground that it infringed on the reserved power of the states to lay taxes.

This Court, however, held that Sec. 514 was constitutional, since the tax immunity created was a necessary and proper implementation of the power "to declare war", U. S. Const., Art. 1, Sec. 8, cl. 11, and the power "to raise and support armies". Ibid., cl. 12. Significantly, this Court continued, "What has been said in no way affects the reserved power of the states to tax. For this statute merely states that the tax-

[3]Conn. Gen. Stat. (Rev. 1958), 12-408(2)

able domicile of servicemen shall not be changed by military assignments." *Dameron* v. *Brodhead* supra, p. 325.

The decision of the lower Court has so broadened the interpretation of Sec. 514 as to render the above statement of this Court a nullity. It would appear from the lower Court's rationale herein that any tax which is ultimately passed on to the nonresident serviceman in connection with the sale of tangible personal property comes within the immunity of Sec. 514.

Accordingly, Connecticut and all the other states are now faced with the spectre of granting to nonresident servicemen immunity from taxation on their purchases of cigarettes and gasoline. In addition to the revenue loss, it is obvious that the administrative problems will be insurmountable.

F. A congressional grant of immunity from state taxation must be expressly conferred.

Sec. 514 does not expressly provide immunity from taxation. Rather, it states that the taxable domicile of servicemen shall not be changed by military assignments.

This Court has consistently held that tax immunity must be conferred expressly. It cannot be granted by implication. *Oklahoma Tax Comm.* v. *United States,* 319 U. S. 598, 604; *Graves* v. *New York ex rel O'Keefe,* 306 U.S. 466, 480.

Since Sec. 514 does not specifically grant servicemen exemption from sales and use taxes, we submit the lower court erred in construing Sec. 514 as providing such tax exemption by implication. *United States Trust Co.* v. *Helvering, Comm. of Int. Rev.,* 307 U. S. 60.

CONCLUSION

This is a case of first impression involving substantial legal questions which require plenary consideration by this Court in order to finally determine the rights of the states in an area of taxation which seriously affects their revenues and administrative burdens.

Respectfully submitted,

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PROOF OF SERVICE

I, F. Michael Ahern, Assistant Attorney General of the State of Connecticut, and a member of the Bar of the Supreme Court of the United States, do hereby certify that on October 7, 1968, pursuant to Rule 33(2a) of the Rules of the Supreme Court of the United States, I served a copy of the foregoing Jurisdictional Statement on the Honorable Erwin Griswold, Solicitor General of the United States, by depositing the same enclosed in a sealed envelope, postage prepaid, in the United States mails, addressed to him at his last known address, viz:

HONORABLE ERWIN GRISWOLD
Solicitor General of the United States
Department of Justice
Washington, D. C. 20530

Dated this 7th day of October, 1968.

F. MICHAEL AHERN
Assistant Attorney General
State of Connecticut

In The

Supreme Court of the United States

OCTOBER TERM, 1968

No.

UNITED STATES OF AMERICA, and LIEUTENANT STANLEY D. SCHUMAN, U. S. N., a member of the armed forces of the United States on active military service not a resident of or domiciled in the State of Connecticut, suing on behalf of himself and all servicemen or former servicemen similarly situated and affected,

Appellees,

v.

JOHN L. SULLIVAN, Tax Commissioner of the State of Connecticut; GERALD A. LAMB, Treasurer of the State of Connecticut; LOUIS I. GLADSTONE, Comptroller of the State of Connecticut; and ROBERT K. KILLIAN, Attorney General of the State of Connecticut,

Appellants.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 427 — September Term, 1967.

(Argued May 16, 1968 Decided July 10, 1968.)

Docket No. 32007

UNITED STATES OF AMERICA, and LIEUTENANT STANLEY D. SCHUMAN, U. S. N., a member of the armed forces of the United States on active military service not a resident of or domiciled in the State of Connecticut, suing on behalf of himself and all servicemen or former servicemen similarly situated and affected,

Plaintiffs-Appellees,

— against —

JOHN L. SULLIVAN, Tax Commissioner of the State of Connecticut; GERALD A. LAMB, Treasurer of the State of Connecticut; LOUIS I. GLADSTONE, Comptroller of the State of Connecticut; and ROBERT K. KILLIAN, Attorney General of the State of Connecticut,

Defendants-Appellants.

Before:

MOORE, HAYS and FEINBERG,

Circuit Judges.

Appeal from a judgment of the United State District Court for the District of Connecticut, M. Joseph Blumenfeld, J., which granted the government's motion for summary judgment declaring that collection of Connecticut's sales and

use taxes from nonresident servicemen present in the state solely pursuant to military orders contravened section 514 of the Soldiers' and Sailors' Civil Relief Act, 50 U. S. C. App. § 574. Affirmed.

FEINBERG, *Circuit Judge*:

This case was brought by the United States of America[1] against various officials of the State of Connecticut to determine whether servicemen present in Connecticut solely by reason of military orders are subject to Connecticut's sales and use taxes. The United States District Court for the District of Connecticut, M. Joseph Blumenfeld, J., granted the motion of the United States for summary judgment, 270 F. Supp. 236 (1967), on the ground that collection of such taxes contravened section 514 of the Soldiers' and Sailors' Civil Relief Act, 50 U. S. C. App. §574[2] Defendants appealed; we affirm.

Like most states, Connecticut levies a broad pattern of sales and use taxes on its residents. Conn. Gen. Stats. §§12-406 to -432a. With certain exceptions, all retail sales of tangible personal property are subject to the sales tax. The retailer pays the state three and one-half per cent of his gross receipts on goods subject to the tax, section 12-408(1); in turn, he is entitled to reimbursement from the customer. Sections 12-408(2), (3). The use tax, section 12-411, is imposed at the

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[1]Lieutenant Stanley D. Schuman, U. S. N., was also a plaintiff below, having brought a class action pursuant to Fed. R. Civ. P. 23 on behalf of himself and all other servicemen similarly situated. The district court dismissed his complaint for lack of jurisdiction, and no appeal has been taken.

[2]Plaintiff also sought an injunction against further collections of the taxes; before the decision, however, counsel for both parties agreed that declaratory relief would suffice to secure the state's compliance. The court permitted Connecticut to continue collecting the taxes pending the outcome of the appeal. It has been stipulated that if the district court's decision is ultimately upheld, all taxes improperly collected since June 28, 1964, will be refunded upon proper application.

same rate on the "storage, use or other consumption" in Connecticut of "tangible personal property" purchased from a retailer for such storage, use or other consumption. Under the use tax, the customer is directly liable to the state, although if the purchase is made from a Connecticut retailer who collects the tax, the customer is relieved of liability. Section 12-411 (2). Sales of motor vehicles, boats and airplanes from other than licensed dealers are also subject to the use tax. Section 12-431. When a Connecticut sales tax has been collected, the use tax does not apply. Section 12-413(1). Finally, whether a sales or use tax has been collected, all proceeds are to be used exclusively for "public health, welfare and education purposes." Section 12-432.

In the district court, the United States offered some examples of the imposition of these taxes on naval personnel domiciled in other jurisdictions but stationed in Connecticut. Lieutenant Stanley D. Schuman of Nebraska[3] and Commander Kent J. Carroll of Michigan both purchased used motorboats in Connecticut from non-dealers. Schuman paid the use tax under protest; Carroll refused to pay. Commander Clyde H. Shaffer of Pennsylvania purchased a new car from a Connecticut dealer who collected the sales tax. Commander Jerome W. Roloff of Wisconsin bought a used car in Florida, and paid a sales tax there. When he subsequently registered the car in Connecticut, he was required to pay the difference between the Florida sales tax and the Connecticut use tax. Finally, Commander William L. Foster purchased a new car from a Connecticut dealer and at the same time registered it in Texas, his home state, paying a Texas sales tax. Nevertheless, the dealer collected a full Connecticut tax.

The sole question on appeal is whether these purchases, and others like them, were exempt from Connecticut's sales

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[3]Schuman at the time of filing the complaint was both a domiciliary and resident of Nesbraska; the other personnel listed above had similar connections with their states of origin.

and use taxes because of section 514 of the Soldiers' and Sailors' Civil Relief Act.[4] In relevant part, that section provides, 50 U. S. C. App. § 574:

> (1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income by any State . . . such person shall not be deemed to have lost a residence or domicile in any State . . . solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State . . . while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income or gross income of any such person by any State . . . of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State . . . and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State . . . . Where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, this section applies with respect to personal property, or the use thereof, within any tax jurisdiction other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such orders: *Provided*, That nothing contained in this section shall prevent taxation by any State . . . in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. . . .
>
> (2) When used in this section, (a) the term "per-

[4] It has been stipulated that Connecticut cannot tax sales to servicemen made by military exchanges or commissaries operated by the armed services on military installations. Such sales are exempt under the Buck Act, 4 U. S. C. § 107.

sonal property" shall include tangible and intangible property (including motor vehicles), and (b) the term "taxation" shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: *Provided*, That the license, fee, or excise required by the State . . . of which the person is a resident or in which he is domiciled has been paid.

The basic purpose of section 514, as it now reads, is clear from its wording and structure. It defines the residence of servicemen, the source of their income, the situs of their property, and the nature of taxation, all for the purpose of exempting servicemen from certain forms of taxation by states in which they are stationed. Section 514(1) first provides that a serviceman shall not lose his home state residence or domicile because of absence due to military orders. Correlatively, it also states that he shall not acquire a residence or domicile in a host state because of his presence there under the same military requirement. It then illustrates the consequences of these provisions. For the purpose of state taxation on income, compensation for military service "shall not be deemed income . . . from sources within" any state of which the serviceman is not a resident. For the purpose of taxation "with respect to personal property, or the use thereof," that property shall not be deemed "to have a situs for taxation" in the host state. Thus, section 514(1) eliminates jurisdictional grounds that otherwise could support taxation by the host state related to the income or personal property of a serviceman. The broad nature of section 514(1) is also made clear by the definitions in section 514(2), which provide that "the term 'personal property' shall include tangible and intangible property (including motor vehicles)," and that "the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof."[5]

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[5]Subsection (2) was added to § 514 in 1944, as discussed below.

In considering whether Connecticut's sales and use taxes are affected by section 514, we turn from its broad design to its details, recognizing that while the face of the statute is not always the end of its interpretation, cf. *In re Miracle Mart, Inc.*, Slip Op. 2533 (2d Cir. June 3, 1968), it is undeniably a good place to start. In arguing that nonresident servicemen stationed in Connecticut are exempt from these state taxes, the United States relies on the language of section 514, which by its terms affects taxation "in respect of . . . personal property." The Connecticut use tax is explicitly levied on the storage, use or consumption in Connecticut of "tangible personal property" purchased from a retailer for such use, and the amount of tax is computed by reference to the "sales price of the property." By its very terms, this is a tax "in respect of . . . personal property." The statutory phrase has a generous reach. The United States argues that it would seem to encompass all taxes, no matter how labelled, which pertain or relate to personal property, rather than to be limited to taxes *on* personal property. Certainly, if a nonresident serviceman's personal property is deemed, in the words of the statute, not to be present in the state, it would be difficult to justify a use tax on it. We realize that this begs the question, for such ghostly absence is allowed only for the purpose of specified taxes, whose definition we must construe. But the assumption helps to show the connection between the tax and the physical present in the state of the personal property, a taxable nexus which seems to fall within the broad phrase "in respect of . . . personal property." Congress clearly had in mind the breadth of that language in removing from its effect taxes on a trade or business.[6] Moreover, section 514 twice specifically envisions the possibility of taxes involving the

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[6]Thus, section 514 also states: *Provided*, That nothing contained in this section shall prevent taxation by any State . . . in respect of personel property used in or arising from a trade or business, if it otherwise has jurisdiction.

"use" of property. Thus, subsection (1) states that the exemption from state taxation applies to taxation:

> with respect to personal property, *or the use thereof,* within any tax jurisdiction other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such [military] orders . . . . [Emphasis added.][7]

Similarly, subsection (2) states that:

> the term "taxation" shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles *or the use thereof* . . . . [Emphasis added.]

The Connecticut sales tax, which is incurred at the time of purchase, is in terms based upon the retailer's privilege of sale, but what he must sell is "tangible personal property." Moreover, whatever the conceptual basis may be, the tax is in reality also assessed against the buyer of the "tangible personal property," as the Connecticut Supreme Court has held, see *Avco Mfg. Corp.* v. *Connelly*, 140 A. 2d 479, 484 (Conn. 1958), and as the statute explicitly requires. Section 12-408(2). See also *First Agricultural Nat'l Bank* v. *State Tax Commission*, 36 U. S. L. W. 4686, 4688-89 (U. S. June 17, 1968). Judge Blumenfeld pointed out in his thorough opinion, 270 F. Supp. at 243-44, that the sales and use taxes are:

> [C]omplementary and designed to promote equality of taxation on personal property whether purchased in state or out of state. . . . Connecticut has merged the purposes and imposition of the sales and use taxes to such an extent that they are but one tax in practical effect. Any distinction between them in the context of this case would be one of form only, not of substance. . . .

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[7]This language was added to § 514 in 1962, under circumstances discussed below.

> Each tax hits with equivalent impact on the personal property of a nonresident serviceman. The fact that the statutory scheme for payment of the sales tax which puts the burden of collecting it on the retailer, with the right to enforce its payment by suit against the buyer, is substituted for a lien on the property itself hardly establishes that the property is not being taxed. . . . No matter which attribute of possessory interest in the property is hit — initial acquisition of ownership, or continued retention — it is always the nonresident serviceman who is hurt when the tax is levied. [Citations omitted.]

See also *Halliburton Oil Well Cementing Co.* v. *Reily*, 373 U. S. 64, 66 (1963); *Henneford* v. *Silas Mason Co.*, 300 U. S. 577, 581-83 (1937). In addition, as with the use tax, the sales tax is computed as a percentage of the property's value, as approximated by its sales price. These basic characteristics indicate that the sales tax also falls within the definition of a tax "in respect of . . . personal property."

The state's argument to us makes much of the theoretical distinction between an income tax or a property tax, on the one hand, and a privilege tax, on the other. The point is made that section 514 recognizes this difference and affects only the former type, while a sales or use tax is obviously the latter. Of course, this distinction may be useful for analysis in some instances, but section 514 does not in terms make it.[8] Because a tax "in respect of" property would appear to be broader than a tax "on property, citations to show that a use tax is not a tax "on" property[9] are not controlling.

The language of section 514, therefore, is helpful to plaintiff United States rather than to Connecticut. However, the state finds support in the statute's silence on the subject

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[8]See also the discussion of *California* v. *Buzard*, 382 U. S. 386 (1966).
[9]E.g., *Henneford* v. *Silas Mason Co.*, 300 U. S. 577, 582 (1937); *Connecticut Light & Power Co.* v. *Walsh*, 57 A. 2d 128 (Conn. 1948).

of sales and use taxes. It points out that when Congress in 1944 revised section 514 to read essentially as it does today, state sales and use taxation was already widespread. Therefore, argues the state, if Congress had intended to preclude such taxation of nonresident servicemen, it would have said so.

An argument based on silence is difficult to deal with, since inferences can be drawn either way; e.g., if Congress had wanted to allow state sales and use taxation, it could have said so in the proviso which permits normal "trade or business" taxes.[10] The legislative history is not informative on this specific point, for we find no mention of sales or use taxes. However, we do discern there a significant concern for the welfare of the serviceman, see, e.g., H. R. Rep. No. 2198, 77th Cong., 2d Sess. 2 (1942), consistent with the Supreme Court's instruction to us to read the Act "with an eye friendly to those who dropped their affairs to answer their country's call." *Le Maistre* v. *Leffers*, 333 U. S. 1, 6 (1948). Section 514 was first enacted in 1942 to protect servicemen against the undue burdens of multiple taxation to which movement around the country under military orders might subject them.[11] In 1944, Congress amended the statute to make it absolutely clear that taxation in respect of nonresident servicemen's "personal" property was impermissible even if not based on the serviceman's residence or domicile.[12] Moreover, even though a contrary interpretation was possible, the Supreme Court later held in *Dameron* v. *Brodhead*, 345 U. S. 322, 326 (1953), that Congress did not restrict the statute's effect to actual incidents of double taxation:

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[10]See note 6 *supra*.

[11]See S. Rep. No. 1558, 77th Cong., 2d Sess. 11 (1942); H. R. Rep. No. 2198, 77th Cong., 2d Sess. 6 (1942); Hearings on H. R. 7029 Before the House Committee on Military Affairs, 77th Cong., 2d Sess. 28 (1942).

[12]See S. Rep. No. 959, 78th Cong., 2d Sess. 1 (1944); H. Rep. No. 1514, 78th Cong., 2d Sess. 2 (1944).

> In fact, though the evils of potential multiple taxation may have given rise to this provision, Congress appears to have chosen the broader technique of statute carefully, freeing servicemen from both income and property taxes imposed by any state by virtue of their presence there as a result of military orders. It saved the sole right of taxation to the state of original residence whether or not that state exercised the right. Congress, manifestly, though that compulsory presence in a state should not alter the benefits and burdens of our system of dual federalism during service with the armed forces. [Footnote omitted.]

In 1962, Congress felt it necessary to clarify the statute even further. A naval officer from New Jersey, stationed in Arlington, Virginia, had been on sea duty for over a year. While he was so engaged, Arlington County assessed a tax on the personal property that he had left in Virginia with his family. The county claimed that since the officer was no longer in Arlington under military orders, his personal property was not exempt from taxation, even though it could not have been taxed while he was there. The case was brought to the attention of Congress, which added the following sentence to subsection (1) of section 514:

> Where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, this section applies with respect to personal property, or the use thereof, within any tax jurisdiction other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such orders . . . .

The new sentence was broader than the facts required, since it explicitly referred to the "use" of personal property as an object of the federal exemption, even though the Arlington case did not involve a use tax. As already noted, this added

language literally applies to the appeal now before us, whether or not Congress intended to broaden section 514. Plaintiff United States points out that if Congress only intended to clarify the statute, as seems to be the case,[13] then this supports the view that the statute already covered use taxes.[14] Otherwise, the logical conclusion would be that Congress simply made a mistake when it included the phrase "or the use thereof," an assumption which ignores the fact that the same phrase had already been in subsection (2) of section 514 for many years.

The most recent discussion of legislative intent appears in *California* v. *Buzard*, 382 U. S. 386 (1966). The Court there considered motor vehicle registration and license fees which had been imposed by California on an Air Force Captain from Washington. The car in question had been purchased in Alabama and brought to California; since it had never been in Washington, there was no duty to register it in that state. The Court construed section 514(2)(b) to mean that an automobile had to be registered in either the home state or the host state. Subsection (2) was added to section 514 in 1944 as part of the clarifying amendments which specifically stated that the exemption of section 514 applied to taxes relating to "personal" property. See note 12 *supra* and accompanying text. Subsection (2)(b) provides that the "taxation" referred to in section 514(1) includes "licenses, fees, or excises imposed in respect to motor vehicles or the use thereof . . . ." Then a proviso adds:

> *Provided*, That the license, fee, or excise required by the State . . . of which the person is a resident or in which he is domiciled has been paid.

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[13] See S. Rep. No. 2182, 87th Cong., 2d Sess. 1 (1962); H. R. Rep. No. 2126, 87th Cong., 2d Sess. 2 (1962).

[14] The case that gave rise to the 1962 amendment was eventually decided in *United States* v. *Arlington County*, 326 F. 2d 929 (4th Cir. 1964). The court there held that tax was barred even under the language before amendment.

Thus, the exemption for servicemen from motor vehicle taxes is explicitly stated in section 514(2)(b), and then modified in the proviso, to deal with a specific problem created by the breadth of section 514(1): whether a serviceman can escape all registration by keeping his car out of his home state.

The Court concluded in *Buzard* that the effect of the proviso to section 514(2)(b) was to narrow the exemption from state taxation granted by section 514(1). Thus, a host state could tax a serviceman's car for registration purposes if his home state had not done so. 382 U. S. at 391-92. However, the Court limited the effect of the proviso to taxes which were necessary to registration. California's license fee of two per cent "of the market value of the vehicle" was, under state law, not imposed as a tax "essential to the registration and licensing of the . . . vehicle." Rather, it served the state's revenue interests and was "raised to defray the general expenses of government." *Id.* at 395-96. The Court pointed out, *id.* at 393, that the license fee[15] there involved did not come within the exception to section 514(1)'s exemption because:

> The very purpose of § 514 in broadly freeing the nonresident serviceman from the obligation to pay property and income taxes was to relieve him of the burden of supporting the governments of the States where he was present solely in compliance with military orders.

Consequently, the Court held that the California motor vehicle taxe there under consideration was barred by section 514.

The language and approach of the Court in *Buzard* strongly suggest that but for the proviso to section 514(2)(b), the host state could not tax a nonresident serviceman's ve-

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[15]The facts in *Buzard* did not require the Court to consider whether California's "registration fee" of $8.00 was in a different category.

hicle at all because motor vehicles are obviously personal property. Although the taxes in the instant case are non-recurring, while those in *Buzard* appear to have been annual,[16] we think *Buzard* is broad enough to rule here. Connecticut's sales and use taxes are imposed for general revenue purposes; imposing such taxes on non-resident servicemen improperly places the burden of supporting Connecticut upon their shoulders. In addition, it is significant that the tax in *Buzard* was explicitly labelled a "privilege" tax;[17] yet the Court held that the broad language of section 514 barred its application to the Captain.

We conclude that the language and the spirit of section 514 call for affirmance of Judge Blumenfeld's decision. Connecticut contended at oral argument that this will cause immense administrative problems in differentiating non-resident servicemen from other customers. We do not think these problems insurmountable, or even seriously burdensome. In fact, Connecticut has already exempted other groups from its sales and use taxes, and no ill effect from these exemptions has been brought to our attention. See sections 12-412 (a) (the United States, the state or subdivisions), (e) (nonprofit charitable hospitals), (h) charitable and religious organizations).

The judgment below is affirmed.

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[16]California's Revenue & Taxation Code provides, in part: § 10751. A license fee is hereby imposed *for the privilege* of operating upon the public highways in this State any vehicle of a type which is subject to registration under the Vehicle Code.
§ 10752. The *annual* amount of the license fee shall be a sum equal to two (2) percent of the market value of the vehicle as determined by the department. [Emphasis addd.]

[17]See note 16 *supra*.

UNITED STATES OF AMERICA

—vs.—

JOHN L. SULLIVAN, TAX COMMISSIONER OF THE STATE OF CONNECTICUT, Et Al

CIVIL No. 11,928

MEMORANDUM OF DECISION

This is a suit by the United States and Lieutenant Stanley D. Schuman, U.S.N., on behalf of all nonresident or nondomiciliary military personnel now stationed in Connecticut against tax officials of the State of Connecticut. The Government seeks a judgment declaring that Connecticut's sales and use taxes (Chap. 219, Conn. Gen. Stat. § 12-406- § 12-432, Rev. of 1958, as amended) cannot be collected from nonresident servicemen in respect of property purchased or used by them in Connecticut consistently with the remedial provisions of Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 App. U.S.C. § 574 (1964)). A refund of all sums heretofore paid to Connecticut on account of said tax by military personnel who were neither residents nor domiciliaries of this state is also sought.

By agreement of counsel, the question of jurisdiction and the application for a preliminary injunction were postponed until the hearing on the merits.

I. Jurisdiction

The defendants, John L. Sullivan and others, public officials of the State of Connecticut, moved to dismiss the suit against them on the ground that Congress has denied to a federal court jurisdiction of such a case. The specific ground is that this suit is barred by act of Congress, 28 U.S.C. § 1341, which provides:

> "The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such state."

This section grew out of the act of August 21, 1937 (Chap. 726, 50 Stat. 738) which generally withdrew jurisdiction from federal district courts to enjoin the collection of a state tax. See 1A J. Moore, Federal Practice ¶0.207, p. 2283 (1959 ed.).

Assuming that § 1341 is applicable, whether "a plain, speedy and efficient remedy may be had in the courts of [this] state" in the instant case is a difficult and close question. *Compare Hillsborough Township* v. *Cromwell,* 326 U.S. 620 (1946) *with Spector Motor Serv., Inc.* v. *McLaughlin,* 323 U.S. 101 (1944). But the question whether an adequate remedy exists in the state courts is a thicket which need not be entered.

Jurisdiction of this court in the case at bar is based on the fact that the United States is a party plaintiff. 28 U.S.C. § 1345. It is settled law that the right of the United States to sue as plaintiff in a federal district court is not limited by the provisions of § 1341. *Department of Employment* v. *United States,* 385 U.S. 355, 357-58 (1966); *United States* v. *Arlington County,* 326 F. 2d 929, 931 (4th Cir. 1964). The rule in this circuit has long been to the same effect. *United States* v. *Woodworth,* 170 F. 2d 1019 (2d Cir. 1948) (Frank, C. J.); *United States* v. *City of New York,* 175 F. 2d 75 (2d Cir.), *cert. denied,* 338 U.S. 885 (1949).

The defendants have attempted to distinguish the *Department of Employment* case from the instant action on the ground that the proprietary interest of the United States in its instrumentalities (e.g., the Red Cross as in *Department of Employment*) is more direct and immediate than the interest of the Government as representative of the class of its mil-

itary personnel. In deciding that there was sufficient interest in the United States to sue, the Supreme Court relied upon the authoritative force of an unbroken line of authority, foremost among which was *United States* v. *Arlington County*, supra, 326 F. 2d 929. See *Department of Employment* v. *United States*, supra, 385 U.S. 355, 358, n.6. *Arlington County*, like the instant action, was a suit by the United States to declare a state personal property tax invalid as in contravention of the Soldiers' and Sailors' Civil Relief Act of 1940. Its citation by the Supreme Court constitutes approval of the proposition that the United States in its capacity as a plaintiff representative of its military personnel is not bound by the restrictions of §1341.[1]

II.

Nor is the instant action barred by the general principle of sovereign immunity in that the State of Connecticut has not consented to this lawsuit. The sovereign immunity of a state may not be interposed as a defense when the United States is the party plaintiff. *Department of Employment* v. *United States*, supra at 358, citing *Monaco* v. *Mississippi*, 292 U.S. 313 (1934) and *Ex Parte Young*, 209 U.S. 123 (1908).

III.

And there is no merit to the defendants' contention that the present case should more properly be considered by a three-judge district court in view of 28 U.S.C. § 2281. A three-judge court is required by § 2281 only when an injunction against the operation or execution of a state statute is sought "upon the ground of the unconstitutionality of such statute." This has been construed to apply only when the state statute

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[1] An interesting analysis of the reasons for the nonapplicability of § 1341 restrictions to the United States as plaintiff is to be found in the opinion of Judge Haynsworth in *United States* v. *Livingston*, 179 F. Supp. 9, 11-12 (E.D. S.C. 1959). *aff'd per curiam*, 364 U. S. 281 (1960).

is challenged as directly conflicting with the mandate of the Federal Constitution. The remedy sought here, if granted, will not completely paralyze the entire operation of Connecticut's statute.

It is now settled that only one judge need sit where a state statute is alleged to be inoperative because of a federal statute which the Supremacy Clause of article VI of the Constitution declares pre-emptive of the state law. *Swift & Co.* v. *Wickham*, 382 U.S. 111 (1965), *overruling Kesler* v. *Department of Public Safety*, 369 U.S. 153 (1962). See *Query* v. *United States*, 316 U.S. 486 (1942).

Accordingly, the defendants' motion to dismiss the complaint because barred by the provisions of 28 U.S.C. § 1341 or for the other reasons enumerated above is denied.

The Merits

It has never been disputed[2] during the course of this proceeding that Connecticut has been assessing and collecting sales and use taxes from nonresident servicemen on active duty in respect of personal property purchased or used by them in Connecticut, other than in a trade or business.[3] Connecticut is one of several states which imposes a retailers' sales and use tax at a statutorily fixed rate against personal property purchased or used within the state. The statute under which such taxes are imposed by Connecticut is the Education, Welfare and Public Health Tax Act (Chap. 219, Conn. Gen. Stat. Rev. of 1958, as amended) commonly referred to as the "Sales and Use Tax Act" (§§ 12-406 to 432 Conn. Gen. Stat. Anno. 1958).

This case presents the question whether the provisions of

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[2]A Stipulation of Facts, dated May 24, 1967, is incorporated into this opinion.

[3]The "trade business" proviso is not applicable here.

the Soldiers' and Sailors' Civil Relief Act bars the defendants from collecting Connecticut sales and use taxes from nonresident servicemen present here in compliance with military orders.

I.

The key provision upon which the plaintiffs rely is part of a comprehensive remedial statute designed "to protect those who have been obliged to drop their own affairs and take up the burdens of the nation." *Boone* v. *Lightner*, 319 U.S. 561, 575 (1943). *Cf. LeMaistre* v. *Leffers*, 333 U.S. 1, 6 (1943). It is found in Section 514(1) (50 App. U.S.C. § 574 (1)) of the Soldiers' and Sailors' Civil Relief Act:

> "For the purpose of taxation in respect of *personal property* . . . of any such [military] person by any State, Territory, possession, or political subdivision of any of the foregoing, . . . of which such person is not a resident or in which he is not domiciled . . ., [his] *personal property shall* not be deemed to be located or present in or to *have a situs for taxation in such State, Territory, possession or political subdivision* . . . . (Emphasis added).

The emphasized words were added to the original version of the Soldiers' and Sailors' Civil Relief Act by amendment on July 3, 1944 (58 Stat. 722). A major reason for the enactment of the amendment was that the prior law did "not prevent the State of 'temporary residence' from taxing tangible personal property actually located in such State so long as the tax does not depend on residence or domicile." S. Rep. No. 959, 78th Cong. 2d Session. 1 (1944). See H.R. Rep. No. 1514, 78th Cong. 2d Sess. 2 (1944).

When the section was amended again in 1962 (76 Stat.

768, Oct. 9, 1962)[4], it was subjected to legislative scrutiny without touching this particular provision because the Senate Committee regarded it as already making it "clear that a serviceman, living with his family and owning personal property in a State other than his State of domicile, is not subject to taxation on his personal property by the nondomiciliary State." S. Rep. No. 2182, 87th Cong. 2d Sess. 1 (1962), accompanying H.R. 9747, U.S. Code Cong. & Adm. News 1962, p. 2841. Such approval by a legislative body is meaningful. *Cf. Electric Storage Battery Co.* v. *Shimadzu*, 307 U.S. 5, 14 (1939).

II.

Connecticut's use tax is an excise "imposed on the storage, use or other consumption in this state of tangible personal property purchased from any retailer for storage, use or other consumption in this state. . . ." Conn. Gen. Stat. § 12-411. See *Stetson* v. *Sullivan*, 152 Conn. 649, 211 A. 2d 685 (1965).

Although in the words of the statute a sales tax is imposed "for the privilege of selling tangible personal property at retail . . . .," Conn. Gen. Stat. § 12-408(1), the retailer is required to collect the tax from the consumer, and the consumer is obligated to pay the tax to the retailer. Conn. Gen. Stat. § 12-408(2). Both sales and use taxes are at the rate of 3-½% of the sales price.

The defendants contend that Connecticut's sales and use taxes do not fall within the scope of the federal statute's ban against taxation "in respect of personal property."

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[4]The 1962 Amendment, not relevant here, provided that a serviceman domiciled in State Y, with a "temporary residence" in State X could not be subjected to a personal property tax by State X, when the serviceman was temporarily out at sea or assigned to a third State but had left his family and personal property behind in State X. 76 Stat. 768 (1962). See *United States* v. *Arlington County*, supra, 326 F. 2d 929.

The breadth and sweep of this phrase has widened under the impact of two recent Supreme Court cases. In *Dameron* v. *Brodhead,* 345 U.S. 322 (1953), the petitioner was a commissioned officer of the United States Air Force, who resided in Denver, Colorado, while stationed at a nearby base. The local taxing authority assessed a tax on certain household goods comprising petitioner's personal property. This was duly paid. In the subsequent suit for refund, the state argued that the Soldiers' and Sailors' Civil Relief Act did not bar the tax since Louisiana, the state of petitioner's domicile, had not taxed the property: The federal law, it was argued, barred only multiple taxation and if the state of permanent residence or domicile did not tax, the state of "temporary residence" was free to do so. The Suprme Court rejected this narrow construction:

> "In fact, though the evils of potential multiple taxation may have given rise to this provision, Congress appears to have chosen the broader technique of the statute carefully, freeing servicemen from both income and property taxes imposed by any state by virtue of their presence there as a result of military orders. It saved the sole right of taxation to the state of original residence whether or not that state exercised the right. Congress, manifestly, thought that compulsory presence in a state should not alter the benefits and burdens of our system of dual federalism during service with the armed forces." *Dameron* v. *Brodhead,* supra, 345 U.S. at 326.

The state would distinguish *Dameron* from this case since the tax there was a recurring personal property tax, not a one-time excise imposed upon a transaction or registration. Such a distinction cannot survive the facts and logic of *California* v. *Buzard,* 382 U.S. 386 (1966).

The state tax in *Buzard* was a 2% "license fee" imposed by California Revenue and Taxation Code in addition to an

$8.00 fee for the registration of an automobile. The Supreme Court was primarily concerned with § 514(2)(b) of the Soldiers' and Sailors' Civil Relief Act,[5] which allows the state of "temporary residence" to impose a "license, fee, or excise" if such a tax is (1) owing to and assessed by the home state, and (2) not yet paid to the home state by the serviceman. The Supreme Court limited the tax that could be assessed under § 514(2)(b) to the amount needed to support the functioning of the licensing and registration procedures of the state of "temporary residence." California was not permitted to assess a "license fee" under the proviso in § 514(2)(b) against an automobile owned by a non-resident serviceman in connection with registration of that automobile where the 2% tax imposed was for general revenue purposes.

The Court ruled at the outset of its opinion that California could collect the 2% tax "*only* if it . . . [was] a 'license, fee, or excise' on a motor vehicle or its use." (382 U.S. 392-93). Since the sole tax which could legally be imposed on motor vehicles was that allowed by § 514(2)(b) and the amount of this tax was limited to that necessarily incident to registration and licensing of vehicles, the implication that no additional amount could be taxed for the use of the automobile is clear.

No viable distinction can be drawn between automobiles and other forms of personal property. The import of *Buzard* is that a state may not tax personal property of non-resident servicemen under any label, except within the limited and sharply defined registration and license exceptions contained in § 514(2)(b).

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[5]Section 514(2)(b) (50 App. U. S. C. § 574(2)(b)) provides: "The term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vhicles or the use thereof: *Provided*, that the license, fee, or excise required by the State . . . of which the person is a resident or in which he is domiciled has been paid."

The Connecticut use tax (§ 12-411 et seq.) on the "storage, use or other consumption" of personal property in this state is therefore a tax prohibited by federal law from being imposed on nonresident servicemen.

III.

The state argues that the sales tax (§ 12-408 et seq.) is a tax on the transaction of purchase and not upon the ownership of personal property. This position must be rejected. Although imposed initially on the retailer "for the privilege of selling tangible personal property at retail" (§ 12-408(1)), the ultimate incidence of this tax falls on the purchaser from whom the retailer is required by statute to collect reimbursement (§12-408(2)). The Connecticut Supreme Court has conceded the ultimate incidence of the sales tax and has ruled that where the Federal Government is the ultimate purchaser, no tax can be levied. *Avco Mfg. Corp.* v. *Connelly,* 145 Conn. 161, 140 A. 2d 479 (1958).

Although the sales tax and use tax are distinct provisions, in terms and in concept for some purposes (see *Connecticut Light & Power Co.* v. *Walsh,* 134 Conn. 295, 300, 57 A. 2d 128 (1948)) in practical effect they are complementary and designed to promote equality of taxation on personal property whether purchased in state or out of state. *Avco Mfg. Corp.* v. *Connelly,* supra at 172.

Moreover, Connecticut imposes a use tax rather than a sales tax on the purchase of a motor vehicle, boat or airplane from other than a licensed dealer. Conn. Gen. Stat. § 12-431. Connecticut has merged the purposes and imposition of the sales and use taxes to such an extent that they are but one tax in practical effect. Any distinction between them in the context of this case would be one of form only, not of substance. The bulk of proceeds of both taxes are used indiscriminately

to promote the public health, welfare and education and for no other purpose. (§ 12-432).

Each tax hits with equivalent impact on the personal property of a nonresident serviceman. The fact that the statutory scheme for payment of the sales tax which puts the burden of collecting it on the retailer, with the right to enforce its payment by suit against the buyer, is substituted for a lien on the property itself hardly establishes that the property is not being taxed. *Cf. United States* v. *Allegheny County*, 322 U.S. 174, 187 (1944). And, although generally a property tax differs from a sales tax in being a recurrent annual demand on capital value instead of a single exaction on the initial transaction whereby ownership rights are acquired, in either case both legal incidence of the tax and the economic burden is imposed on the vendee. The difference in the rate does not change the incidence of the tax. Under whatever method the tax is enforced, or by whatever form its subject may be described, in substance the amount of the tax assessed is precisely determined by the value of the property. No matter which attribute of possessory interest in the property is hit — initial acquisition of ownership, or continued retention — it is always the nonresident serviceman who is hurt when the tax is levied.

Any confusion about concepts and definitions is considerably clarified by the rationale of the Soldiers' and Sailors' Civil Relief Act. The Congress was not measuring the exemption against particular concrete forms a state's tax might take. The rationale for the exception resulting in a certain measure of favored tax treatment which clearly emerges from the statute is that a nonresident serviceman should be exempt from "the burden of supporting the government of the States where he was present solely in compliance with military orders." *California* v. *Buzard*, supra, 382 U.S. at 393. *Dameron* v. *Brodhead*, supra, 345 U.S. 322.

Reading § 514 "with an eye friendly to those who dropped their affairs to anwer their country's call," *LeMaistre* v. *Leffers*, supra, 333 U.S. at 6, the imposition of the sales tax and the use tax must yield to the mandate of Congress. Accordingly, I hold that the phrase "taxation in respect of personal property" in § 514 embraces Connecticut's "Sales and Use" taxes.

IV.

The state also argues that Congress in enacting the Buck Act (4 U.S.C. §§104-110) has conferred upon the states jurisdiction to collect sales and use taxes "in any Federal area." 4 U.S.C. § 105. The Buck Act, it is contended, would conflict with any construction of the Soldiers' and Sailors' Civil Relief Act which would bar a state from collecting sales and use taxes. The adage that conflicting statutes must be construed so as to give effect to both is invoked. *United States* v. *Zacks*, 375 U.S. 59, 67-68 (1963). Accordingly, it is argued, the Soldiers' and Sailors' Civil Relief Act should not be construed to apply to sales and use taxes in order to avoid a conflict of federal statutes.

Section 105 of the Buck Act merely provides that no person "shall be relieved from liability . . . on the ground that the sale or use . . . occurred in whole or in part within a Federal area. . . ." The Soldiers' and Sailors' Civil Relief Act, however, gives relief from liability on an entirely different ground, namely, that the person taxed is a non-resident serviceman. The scope and purpose of the two statutes are entirely separate and distinct. There is no conflict between them. In granting states permission to impose sales taxes within the federal enclave Congress did not say that it granted authority to impose taxes on sales to nonresident servicemen generally.

V.

The state raises an affirmative defense that the Government is barred from bringing this suite under the doctrine of laches. The relevant words of § 514(1) (50 App. U.S.C. § 574 (1)) were added by amendment in 1944 and the Connecticut Sales and Use tax was enacted in 1947. Connecticut has, therefore, been collecting these taxes for twenty years. So the state argues. But the ostensible illegality of these assessments may not have become obvious until the very recent decisions of the United States Supreme Court in *Dameron* and *Buzard*. However, a decision on the merits as to whether laches existed need not be made.

It is a matter of well-settled law that the "United States is not bound by state statutes of limitation or subject to the defense of laches in enforcing its rights." *United States* v. *Summerlin*, 310 U.S. 414, 416 (1940). The principle has its roots deep in the common law. It is epitomized in the ancient maxim: *Nullum tempus occurrit regi.*[6] Today, the rule is not based so much on the prerogative of the sovereign as on the needs of public policy. *Guaranty Trust Co.* v. *United States*, 304 U.S. 126 (1938); *United States* v. *Thompson*, 98 U.S. 486 (1878). The principle was very recently confirmed in *Costello* v. *United States*, 365 U.S. 265, 281 (1961). In summary, the United States, as sovereign, is not subject to a defense of laches when it sues. That defense may not be interposed here.

But conceding that the Government may pursue this action for a declaratory judgment, it does not follow that indi-

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[6] An excellent analysis of the history and policy of the rule and maxim is to be found in *Guaranty Trust Co.* v. *United States*, supra, 304 U. S. at 132. Justice Stone traces its development from the *Magdalen College Case*, 11 Co. Rep. 66b, 74b and Bracton, De Legibus, Lib. ii, c. 5, § 7, down to the opinion of Judge Story in *United States* v. *Hoar*, Fed. Cas. No. 15, 373, pp. 329, 330. Judge Story states that the reason for the rule is "to be found in the great public policy of preserving the public rights, revenues, and property from injury and loss, by the negligence of public officers."

vidual servicemen may ignore the state procedure in claiming refunds for taxes already paid.

> "No refund shall be allowed unless a claim therefor is filed with the commissioner within three years from the last day of the month succeeding the quarterly period for which the overpayment was made, or, with respect to assessment made under sections 12-415 and 12-416, within six months after the assessments become final, or within six month from the date of overpayment, whichever period expires later. No credit shall be allowed after the expiration of the period specified for filing claims for refund unless a claim for credit is filed with the commissioner within such period, or unless the credit relates to a period for which a waiver is given pursuant to subsection (8) of section 12-415." Conn. Gen. Stat. § 12-425(2).

State law has been given effect as controlling the assessment date for property taxes even when a congressional exemption existed after a specified date. *Board of County Commissioners* v. *Seber*, 130 F. 2d 663, 670 (10th Cir. 1942), aff'd., 318 U.S. 705 (1943). Also,

> "In the absence of explicit legislative policy cutting across state interests, we draw upon a general principle that the beneficiaries of federal rights are not to have a privileged position over other aggrieved tax-payers in relations with the states or their political subdivisions." *Jackson County* v. *United States*, 308 U.S. 343, 352 (1939).

The Supreme Court explicitly avoided deciding the applicability of the state statute of limitations in a suit brought by private litigants to recover state taxes assessed and collected in violation of a specified federal exemption. *Ward* v. *Love County*, 253 U.S. 17, 25 (1920).

Moreover, the beneficiaries of the federally created exemption from state taxes in *Seber*, *Ward*, and *Jackson County* were American Indians. These people have long occupied a special position as wards of the United States.[7] A particularly favorable construction is to be accorded tax exemptions secured to the Indian people. *Carpenter* v. *Shaw*, 280 U.S. 363, 366-67 (1930). But, although a state cannot invalidate a federally created right, state law may implement its exercise in the interest of orderly administration.[8] *Board of County Commissioners* v. *Seber*, supra, 130 F. 2d at 670; see *Jackson County* v. *United States*, supra, 308 U.S. at 351-52 (Mr. Justice Frankfurter).

Accordingly, an individual serviceman seeking to recover sales and use taxes paid to Connecticut must comply with the three year statute and the procedure outlined in Conn. Gen. Stat. § 12-425(2). Connecticut law 'does not require formal protest' at time of payment in order to recover taxes paid, provided a claim for refund is made within the time specified in § 12-425(2).[9]

VI.

A final point remains to be considered. Besides the United States of America, Lt. Stanley D. Schuman, U.S.N., is a party plaintiff who sues for himself and on behalf of all servicemen or former servicemen similarly situated and affected, too numerous to be made parties. There undoubtedly are attributes to this action by him which would have been sufficient to

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[7]See the opinion of Mr. Justice Black in *Jackson County* v. *United States*, supra, 308 U.S. at 353. See also *Board of County Commissioners* v. *Seber*, supra, 318 U.S. at 715.

[8]This principle is applicable at least when the suit is by a private litigant, even if not controlling in a suit by the United States. *Compare City of New Orleans* v. *United States*, 371 F. 2d 21, 28 (5th Cir. 1967) *with United States* v. *Cocreham*, 247 F. Supp. 731, (E.D. La. 1965).

[9]See *District of Columbia* v. *McFall*, 188 F. 2d 991, 992 (D.C. Cir. 1951).

meet the prerequisites of Rule 23(a), Fed. R. Civ. P., for a class action,[10] and this case also fits neatly within the additional requirement of Rule 23(b)(2):

> [T]he party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole;"

But there is a significant deficiency in the pleadings. Even if this were to be treated as a class action brought by Lt. Schuman so as to permit aggregation of all the individual claims in order to establish the requisite jurisdictional amount under either 28 U.S.C. § § 1331 or 1332, this amount is not alleged to be in controversy. Considering that his own claim is for $21.53, an assumption that the requisite amount must exist is somewhat speculative. More significantly, the eleventh amendment forbids a suit by a private individual against a state in the federal courts. Nor does Connecticut's consent to be sued in its own court (Conn. Gen. Stat. § 12-422) impart its consent to be sued in a federal court. *Great Northern Life Ins. Co.* v. *Read*, 322 U.S. 47, 54 (1944; *Ford Motor Co.* v. *Department of Treasury of Indiana*, 323 U.S. 459, 465 (1945). Schuman's claim is dismissed for lack of jurisdiction without prejudice to his claim against the State of Connecticut.

The litigious situation presented by this case will be quite as fully benefited as a practical matter by granting the relief sought by the Government, for that will settle the legality of the state's refusal to honor the exemption from its sales

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[10]Rule 23(a) provides: "One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class."

and use taxes which § 514 of the Soldiers' and Sailors' Civil Relief Act requires. Commendably, counsel for both parties have agreed that declaratory relief rather than injunctive relief will suffice to secure the state's ready compliance with the court's ruling.

Accordingly, the court

DECREES and ADJUDGES that judgment enter declaring that each and all assessments and collections of sales or use taxes which defendants have made and are making in respect of personal property purchased or used in Connecticut by Schuman and other persons, who, at the time as of which the tax was or is levied, were or are members of the Armed Forces of the United States on active duty and residents of or domiciled in states other than Connecticut and absent from such states other than Connecticut and absent from such states solely by reason of compliance with military or naval orders, were and are in contravention of the Soldiers' and Sailors Civil Relief Act of 1940.

Dated at Hartford, Connecticut, this 28th day of June, 1967.

M. JOSEPH BLUMENFELD
United States District Judge

Soldiers' and Sailors' Civil Relief Act of 1940, c. 888, 54 Stat. 1178:

SEC. 514 [as added by Sec. 17, Soldiers' and Sailors' Civil Relief Act Amendments of 1942, c. 581, 56 Stat. 769; and as amended by Sec. 1, Act of July 3, 1944, c. 397, 58 Stat. 722; and Act of October 9, 1962, P.L. 87-771, 76 Stat. 768].

(1) For the purposes of taxation in respect of any person, or of his *personal* property, income, or gross in-

come, by any State, Territory, possession, or political subdivision of any of the foregoing or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while and solely by reason of being, so absent. For the purposes of taxation in respect of the *personal property*, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, *and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district.* [Where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, this section applies with respect to personal property, or the use thereof, within any tax jurisdiction other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such orders:] *Provided, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political sub-division of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has*

jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to *October 6, 1942.*

(2) When used in this section, (a) the term "personal property" shall include tangible and intangible property (including motor vehicles), and (b) the term "taxation" shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: Provided, That the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid.

(50 U.S.C. App. 1964 ed., Sec. 574).

* The italicized portions of Section 514 were added in 1944. The portion in brackets was added in 1962. Otherwise the Section is as it stood in 1942.

EDUCATION, WELFARE AND PUBLIC HEALTH TAX ACT (REV. 1958) AS AMENDED.

SEC. 12-406. Title. This chapter is known and shall be cited as the "Education, Welfare and Public Health Tax Act."

SEC. 12-407. Definitions. Whenever used in this chapter:

(1) "Person" means and includes any individual, firm, co-partnership, joint venture, association of persons however formed, social club, fraternal organization, corporation, estate, trust, fiduciary receiver, trustee, syndicate, the United States, this state or any political subdivision thereof or any group or combination acting as a unit, and any other individual or officer acting under the authority of any court in this state.

(2) "Sale" and "selling" mean and include: (a) Any transfer of title, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration; (b) any withdrawal, except a withdrawal pursuant to a transaction in foreign or interstate commerce, of tangible personal property from the place where it is located for delivery to a point in this state for the purpose of the transfer of title, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of the property for a consideration; (c) the producing, fabricating, processing, printing or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing or imprinting; (d) the furnishing and distributing of tangible personal property for a consideration by social clubs and fraternal organizations to their members or others; (e) the furnishing, preparing, or serving for a consideration of food, meals or drinks; (f) a transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price; (g) a transfer for a consideration of the title of tangible personal property which has been produced, fabricated or printed to the special order of the customer, or of an original visualization or design where the intrinsic value lies in the manual skill and imagination of the maker thereof and which is not produced by the maker for public exhibition; (h) a transfer for a consideration of the occupancy of any room or rooms in a hotel or lodging house for a period of thirty consecutive calendar days or less.

(3) "Retail sale" or "sale at retail" means and includes a sale for any purpose other than resale in the regular course of business of tangible personal property or a transfer for a consideration of the occupancy of any room or rooms in a hotel or lodging house for a period of thirty consecutive calendar days or less. The delivery in this state of tangible personal property

by an owner or former owner thereof or by a factor, if the delivery is to a consumer pursuant to a retail sale made by a retailer not engaged in business in this state, is a retail sale in this state by the person making the delivery. He shall include the retail selling price of the property in his gross receipts.

(4) "Storage" includes any keeping or retention in this state for any purpose except sale in the regular course of business or subsequent use solely outside this state of tangible personal property purchased from a retailer.

(5) "Use" includes the exercise of any right or power over tangible personal property incident to the ownership of that property, except that it does not include the sale of that property in the regular course of business.

(6) "Storage" and "use" do not include keeping, retaining or exercising any right or power over tangible personal property shipped or brought into this state for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated or manufactured into, attached to or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state.

(7) "Purchase" means and includes: (a) Any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property or of the occupancy of any room or rooms in a hotel or lodging house for a period of thirty consecutive calendar days or less for a consideration; (b) a transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price; (c) a transfer for a consideration of tangible personal property which has been produced, fabricated or printed to the special order of the

customer, or of any publication, except tangible personal property consisting of an original visualization or design where the intrinsic value lies in the manual skill and imagination of the maker thereof and which is not produced by the maker for public exhibition.

(8) "Sales price" means the total amount for which tangible personal property is sold or the total amount of rent received for occupancy, valued in money whether paid in money or otherwise, without any deduction on account of any of the following: (a) The cost of the property sold; (b) the cost of materials used, labor or service cost, interest charged, losses or any other expenses; (c) the cost of transportation of the property prior to its purchase. The total amount for which the property is sold or the total amount of rent received for occupancy includes all of the following: (a) Any services that are a part of the sale; (b) any amount for which credit is given to the purchaser by the seller. "Sales price" does not include any of the following: (a) Cash discounts allowed and taken on sales; (b) the amount charged for property returned by customers upon rescission of the contract of sale when the entire amount charged therefor is refunded either in cash or credit, and when the property is returned within ninety days from the date of purchase; (c) the amount charged for labor or services rendered in installing or applying the property sold; (d) the amount of any tax, not including any manufacturers' or importers' excise tax, imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer; (e) transportation charges separately stated, if the transportation occurs after the purchase of the property is made.

(9) "Gross receipts" means the total amount of the sales price, of the retail sales of retailers or the total amount of the rent received for occupancy, valued in money, whether received in money or otherwise, without any deduction on ac-

count of any of the following: (a) The cost of the property sold. However, in accordance with such regulations as the tax commissioner may prescribe, a deduction may be taken if the retailer has purchased property for some other purpose than resale, has reimbursed his vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property; (b) the cost of the materials used, labor or service cost, interest paid, losses or any other expense; (c) the cost of transportation of the property prior to its sale to the purchaser. The total amount of the sales price includes all of the following: (a) Any services that are a part of the sale; (b) all receipts, cash, credits and property of any kind; (c) any amount for which credit is allowed by the seller to the purchaser. "Gross receipts" do not include any of the following: (a) Cash discounts allowed and taken on sales; (b) sales price of property returned by customers upon rescission of the contract of sale when the full sales price is refunded either in cash or credit, and when the property is returned within ninety days from the date of sale; (c) the price received for labor or services used in installing or applying the property sold; (d) the amount of any tax, not including any manufacturers' or importers' excise tax, imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer; (e) transportation charges separately stated, if the transportation occurs after the sale of the property is made to the purchaser.

(10) "Business" includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit or advantage, either direct or indirect.

(11) "Seller" includes every person engaged in the business of selling tangible personal property the gross receipts from the retail sale of which are required to be included in the measure of the sales tax and every operator as defined in subsection (18) of this section.

(12) "Retailer" includes: (a) Every person engaged in the business of making sales at retail or in the business of making retail sales at auction of tangible personal property owned by the person or others; (b) every person engaged in the business of making sales for storage, use or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use or other consumption; (c) every operator as defined in subsection (18) of this section; (d) every person soliciting orders within this state by means of mail order catalogs or other advertising circulars who, by reason thereof receives and accepts orders either within or without the state from the general public in this state for the sale and delivery of goods customarily sold in retail business establishments; (e) when in the opinion of the tax commissioner it is necessary for the efficient administration of this chapter to regard salesman, representative, peddler or canvasser as the agent of the dealer, distributor, supervisor or employer under whom he operates or from whom he obtains the tangible personal property sold by him, the tax commissioner may, in his discretion, treat and regard such agent as the retailer jointly responsible with his principal, employer or supervisor for the collection and payment of the tax imposed by this chapter.

(13) "Tangible personal property" means personal property which may be seen, weighed, measured, felt or touched or which is in any other manner perceptible to the senses.

(14) "In this state" or "in the state" means within the exterior limits of the state of Connecticut and includes all

territory within these limits owned by or ceded to the United States of America.

(15) "Engaged in business in the state" means selling in this state, tangible personal property for use, storage or consumption within the state or engaging in the transfer for a consideration of the occupancy of any room or rooms in a hotel or lodging house for a period of thirty consecutive calendar days or less. The term shall include but shall not be limited to the following acts or methods of transacting business: (a) Maintaining, occupying or using, permanently or temporarily, directly or indirectly, through a subsidiary or agent, by whatever name called, of any office, place of distribution, sales or sample room or place, warehouse or storage point or other place of business and (b) having any representative, agent, salesman, canvasser or solicitor operating in this state for the purpose of selling, delivering or taking orders of tangible personal property.

(16) "Hotel" means any buildings regularly used and kept open as such for the feeding and lodging of guests where any person who conducts himself properly and who is able and ready to pay for such services is received if there are accommodations for him and which derives the major portion of its operating receipts from the renting of rooms and the sale of food. "Hotel" shall include any apartment hotel wherein apartments are rented for fixed periods of time, furnished or unfurnished, while the keeper of such hotel supplies food to the occupants thereof, if required. (17) "Lodging house" means any building or portion of a building, other than a hotel or apartment hotel, in which persons are lodged for hire with or without meals, including, but not limited to, any motel, motor court, motor inn, tourist court or similar accommodation; provided the terms "hotel", "apartment hotel" and "lodging house" shall not be construed to include: (a) Privately owned and operated convalescent homes,

homes for the aged, infirm, indigent or chronically ill; (b) religious or charitable homes for the aged, infirm, indigent or chronically ill; (c) privately owned and operated summer camps for children; (d) summer camps for children operated by religious or charitable organizations, or (e) lodging accommodations at educational institutions. (18) "Operator" means any person operating a hotel or lodging house in the state, including, but not limited to, the owner or proprietor of such premises, lessee, sublessee, mortgagee in possession, licensee or any other person otherwise operating such hotel or lodging house. (19) "Occupancy" means the use or possession, or the right to the use or possession, of any room or rooms in a hotel or lodging house, or the right to the use or possession of the furnishings or the services and accommodations accompanying the use and possession of such room or rooms, for a period of thirty consecutive calendar days or less. (20) "Room" means any room or rooms of any kind in any part or portion of a hotel or lodging house let out for use or possession for lodging purposes. (21) "Rent" means the consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also any amount for which credit is allowed by the operator to the occupant, without any deduction therefrom whatsoever. ever.

SEC. 12-408. *The sales tax.* (1) *Imposition and rate.* For the privilege of selling tangible personal property at retail, or of transferring occupancy of any room or rooms in a hotel or lodging house in this state for a consideration, a tax is hereby imposed on all retailers at the rate of three and one-half per cent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail or, with respect to each such transfer of occupancy, from the total amount of rent received for such occupancy of any room or rooms in a hotel or lodging house for the first period of not exceeding thirty

consecutive calendar days, except that a rate of one and three-quarters per cent of such gross receipts on all sales of fourteen cents or less is hereby imposed in lieu of said rate of three and one-half per cent, provided the retailer making such sales shall keep records thereof acceptable to the tax commissioner. Upon his failure to keep such records, said rate of three and one-half per cent shall apply to all such sales. An amount equal to ten per cent of the gross revenue from the tax imposed on transfers of occupancy by this section for the last-preceding fiscal year is appropriated to the state development commission and shall be used by said commission for the promotion and development of the recreation industry of Connecticut, including, but not limited to, the vacation, travel, hotel, motel and restaurant businesses in this state. Said ten per cent thus appropriated may be used for the purchase of advertising and for the production and distribution of printed literature designed to promote greater vacation travel into the state. Not more than ten per cent of such appropriations shall be devoted to administrative costs including personnel.

(2) *Reimbursement.* Reimbursement for the tax hereby imposed shall be collected by the retailer from the consumer and such tax reimbursement, termed "tax" in this and the following subsections, shall be paid by the consumer to the retailer and each retailer shall collect from the consumer the full amount of the tax imposed by this chapter or an amount equal as nearly as possible or practicable to the average equivalent thereof. Such tax shall be a debt from the consumer to the retailer, when so added to the original sales price, and shall be recoverable at law in the same manner as other debts except as provided in section 12-432a.

(3) *Bracket system for adding and collecting tax.* For the purpose of adding and collecting the tax imposed by this chapter, or an amount equal as nearly as possible or practicable to the average equiva[illegible]reof, by the retailer from

the consumer the following bracket system shall be in force and effect as follows:

Amount of Sale	Amount of Tax
$0.01 to $0.14 inclusive	No Tax
.15 to .38 inclusive	1¢
.39 to .64 inclusive	2¢
.65 to .88 inclusive	3¢
.89 to 1.18 inclusive	4¢
1.19 to 1.57 inclusive	5¢
1.58 to 1.85 inclusive	6¢
1.86 to 2.14 inclusive	7¢

On all sales above $2.14, the tax shall be computed at the rate of three and one-half per cent.

(4) *Unlawful advertising.* No retailer shall advertise or hold out or state to the public or to any consumer, directly or indirectly that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the sales price of the property sold or that, if added, it or any part thereof will be refunded. Under the provisions of this section, however, a retailer may advertise the sale of tangible personal property by any of the following methods: By stating the sales price alone without reference to the tax; by stating separately the sales price and the amount of tax to be collected thereon; by stating the sales price "plus tax" or "exclusive of tax" or by stating a sales price which includes the tax, together with the words "tax included" or "tax incl."; provided the retailer in the case of all such sales shall maintain his records to show separately the actual price of such sales and the amount of the tax paid thereon; and provided such retailer, if requested, shall furnish the consumer with a sales slip or other like evidence of the sale, showing the tax separately computed thereon. Any person violating any provision of this subsection shall be fined not more than one hundred dollars for each offense.

(5) *Notices, signs or advertisements subject to approval.* No retailer shall exhibit or display on his premises any notice, sign or other advertising matter tending to mislead the public in connection with the imposition or collection of the tax. The tax commissioner may approve a form of notice for the purpose of explaining the operation of the tax.

SEC. 12-409. *Permits.* (1) *Permit required.* No person shall engage in or transact business as a seller within this state, unless a permit or permits have been issued to him as hereinafter prescribed.

(2) *Application for permit.* Every person desiring to engage in or conduct business as a seller within this state shall file with the commissioner an application for a permit for each place of business. Every application for a permit shall be made upon a form prescribed by the commissioner and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business and such other information as the commissioner requires. The application shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application.

(3) *Permit fee.* At the time of making an application the applicant shall pay to the state tax commissioner a permit fee of one dollar for each permit.

(4) *Issuance and display of permit.* After compliance with subsections (1), (2) and (3) of this section by the applicant, the commissioner shall grant and issue to such applicant a separate permit for each place of business within the state. A permit is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at

the place designated therein. It shall at all times be conspicuously displayed at the place for which issued.

(5) *Reissuance of permit.* A seller whose permit has been suspended or revoked shall pay to the tax commissioner a fee of five dollars for the reissuance of a permit.

(6) *Revocation of permit.* Whenever any person fails to comply with any provision of this chapter relating to the sales tax or any regulation of the commissioner relating to the sales tax prescribed and adopted under this chapter, the commissioner, upon hearing, after giving such person ten days' notice in writing specifying the time and place of hearing and requiring him to show cause why his permit or permits should not be revoked, may revoke or suspend any one or more of the permits held by the person. The notice may be served personally or by registered or certified mail. The commissioner shall not issue a new permit after the revocation of a permit unless he is satisfied that the former holder of the permit will comply with the provisions of this chapter relating to the sales tax and the regulations of the commissioner.

(7) *Unlawful acts.* Any person who violates any provision of this section shall be fined not more than fifty dollars for the first offense and not more than one hundred dollars for each subsequent offense. For the purpose of this subsection, the engaging in or conducting of a business as a seller in this state for each period of one week without a permit shall constitute a separate offense.

SEC. 12-410. *Presumptions and resale certificates.* (1) *Presumption of taxability; resale certificate.* For the purpose of the proper administration of this chapter and to prevent evasion of the sales tax it shall be presumed that all gross receipts are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who

makes the sale unless he takes from the purchaser a certificate to the effect that the property is purchased for resale.

(2) *Effect of certificate.* The certificate relieves the seller from the burden of proof only if taken in good faith from a person who is engaged in the business of selling tangible personal property and who holds the permit provided for in section 12-409 and who, at the time of purchasing the tangible personal property, intends to sell it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose.

(3) *Form of certificate.* The certificate shall be signed by and bear the name and address of the purchaser, shall indicate the general character of the tangible personal property sold by the purchaser in the regular course of business. The certificate shall be substantially in such form as the commissioner prescribes.

(4) *Liability of purchaser.* If a purchaser who gives a certificate makes any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the use shall be deemed a retail sale by the purchaser as of the time the property is first used by him, and the cost of the property to him shall be deemed the gross receipts from such retail sale. If the sole use of the property other than retention, demonstration or display in the regular course of business is the rental of the property while holding it for sale, the purchaser may elect to include in his gross receipts the amount of the rental charged rather than the cost of the property to him.

SEC. 12-411. *The use tax.* (1) *Imposition and rate.* An excise tax is hereby imposed on the storage, use or other consumption in this state of tangible personal property purchased from any retailer for storage, use or other consumption in this

state at the rate of three and one-half per cent of the sales price of the property.

(2) *Liability for tax.* Every person storing, using or otherwise consuming in this state tangible personal property purchased from a retailer is liable for the tax. His liability is not extinguished until the tax has been paid to this state, except that a receipt from a retailer engaged in business in this state or from a retailer who is authorized by the commissioner under such regulations as he may prescribe, to collect the tax and who is, for the purposes of this chapter relating to the use tax, regarded as a retailer engaged in business in this state, given to the purchaser pursuant to subsection (3) of this section is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

(3) *Collection by retailer.* Every retailer engaged in business in this state and making sales of tangible personal property for storage, use or other consumption in this state, not exempted under this chapter, shall, at the time of making the sales or if the storage, use or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use or other consumption becomes taxable, collect the use tax from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the commissioner. For the purpose of uniformity of tax collection by the retailer the tax brackets set forth in subsection (3) of section 12-408 pertaining to the sales tax shall be employed in the computation of the tax imposed by this section.

(4) *Tax as debt.* The tax required to be collected by the retailer constitutes a debt owed by the retailer to this state.

(5) *Unlawful advertising.* The provisions of subsection (4) of section 12-408 pertaining to the sales tax shall apply with equal force to the use tax.

(6) *Separate statement of tax.* The tax required to be collected by the retailer from the purchaser shall be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sales.

(7) *Unlawful acts.* Any person violating the provisions of subsection (3), (5) or (6) shall be fined not more than one hundred dollars.

(8) *Registration of retailers.* Every retailer selling tangible personal property for storage, use or other consumption in this state shall register with the commissioner and give the name and address of all agents operating in this state, the location of all distribution or sales houses or offices or other places of business in this state and such other information as the commissioner may require.

(9) *Presumption of purchase for use; resale certificate.* For the purpose of the proper administration of this chapter and to prevent evasion of the use tax and the duty to collect the use tax, it shall be presumed that tangible personal property sold by any person for delivery in this state until the contrary is established. The burden of proving the contrary is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the property is purchased for resale.

(10) *Effect of certificate.* The certificate relieves the person selling the property from the burden of proof only if taken in good faith from a person who is engaged in the business of selling tangible personal property and who holds the permit provided for by section 12-409 and who, at the time of purchasing the tangible personal property, intends to sell it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose.

(11) *Form of certificate.* The certificate shall be signed by and bear the name and address of the purchaser, shall indicate the number of the permit issued to the purchaser and shall indicate the general character of the tangible personal property sold by the purchaser in the regular course of business. The certificates shall be substantially in such form as the commissioner may prescribe.

(12) *Liability of purchaser.* If a purchaser who gives a certificate makes any storage or use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property is first so stored or used. If the sole use of the property, other than retention, demonstration or display in the regular course of business, is the rental of the property while holding it for sale, the purchaser may elect to pay the tax on the use measured by the amount of the rental charged rather than the sales price of the property to him.

(13) *Presumption of purchase from retailer.* It shall be presumed that tangible personal property shipped or brought to this state by the purchaser was purchased from a retailer for storage, use or other consumption in this state.

SEC. 12-412. *Exemptions.* Taxes imposed by this chapter shall not apply to the gross receipts from the sale of and the storage, use or other consumption in this state with respect to the following items:

(a) *The United States, the state or subdivisions.* Sales of tangible personal property to the United States, the state of Connecticut or any of the political subdivisions thereof, or its or their respective agencies.

(b) *Federal exemptions.* Sales of tangible personal property which this state is prohibited from taxing under the constitution or laws of the United States.

(c) *Gas, water, electricity, telephone and telegraph services.* The sale, furnishing or service of gas, water, electricity, telephone and telegraph when delivered to consumers through mains, lines or pipes.

(d) *Prescription medicines.* Sales of medicine only by prescription.

(e) *Nonprofit charitable hospitals.* Sales of tangible personal property to and by nonprofit charitable hospitals in this state for the exclusive purposes of such institutions.

(f) *Newspapers and magazines.* Sales of magazines by subscription and of newspapers.

(g) *Cigarettes.* Sales of cigarettes upon the sale of which a tax is imposed by the law of this state.

(h) *Charitable and religious organizations.* Sales of tangible personal property to charitable and religious organizations.

(i) *Educational institution meals.* Sales of food products and meals in a student cafeteria, dining-hall, dormitory, fraternity or sorority maintained in a private, public or parochial school, college or university, to members of such institutions or organizations.

(j) *Children's clothing.* Sales of articles of children's clothing, classified as such in accordance with the recognized standards of the trade, for the express and exclusive use of children and subject to regulations prescribed by the commissioner.

(k) *Personal services.* Professional, insurance or personal service transactions which involve sales as inconsequential elements for which no separate charges are made.

(l) *Livestock, rabbits and poultry; feed; seeds and tree seedlings; plants; fertilizer.* (1) Sales of livestock, rabbits and poultry of a kind which ordinarily constitute food for human consumption; (2) sales of feed, including the bags in which it is customarily contained, for livestock, rabbits and poultry of a kind which ordinarily constitute food for human consumption or are to be sold in the regular course of business; (3) sales of seeds and tree seedlings or transplants sold by the state forester under section 23-23; (4) sales of fertilizer. Fertilizer shall include ground limestone, hydrated lime, insecticides, fungicides, seed inoculants, seed disinfectants and plant hormones, as well as other substances commonly regarded in the same category and for the same use; (5) sales of plants, including parts of plants, suitable for planting to produce food for human consumption or when such plants, including parts thereof or the produce thereof, are to be sold in the regular course of business, including such item as seedpotatoes, onion sets, asparagus roots, berry plants or bushes and fruit trees. (6) Sales of draft horses.

(m) *Food products.* The sale of food products for human consumption. "Food products" include cereals and cereal products, milk and milk products, oleomargarine, meat and meat products, fish and fish products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, sugar and sugar products other than candy and confectionery, coffee and coffee substitutes, tea, cocoa and cocoa products other than candy and confectionery. "Food products" do not include spirituous, malt, or vinous liquors, soft drinks, sodas or beverages such as are ordinarily dispensed at bars and soda fountains, or in connection therewith, medicines except by prescription, tonics and preparations in liquid, powdered, granular, tablet, capsule, lozenge and pill form sold as dietary supplements or adjuncts. "Food products" also do not include meals served on or off the premises of the retailer or drinks or foods furnished, prepared or

served for consumption at tables, chairs or counters or from trays, glasses, dishes or other tableware provided by the retailer, except for meals for which the purchaser is charged a total of less than one dollar as provided in subsection (q) of this section.

(n) *Containers.* (1) Nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container; (2) containers when sold with the contents if the sales price of the contents is not required to be included in the measure of the taxes imposed by this chapter; (3) returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling. As used herein, "returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are "nonreturnable containers." Nothing in this subsection shall be construed so as to tax the gross receipts from the sale of or the storage, use or other consumption in this state of bags in which feed for livestock and poultry, as defined in subsection (l), is customarily contained.

(o) *Motor vehicle fuel.* There are exempted from the taxes imposed by this chapter the gross receipts from the distribution of and the storage, use or other consumption in this state of motor vehicle fuel the distribution of which in this state is subject to the tax imposed by the laws of this state.

(p) *Domestic fuel.* Sales of fuel used exclusively for domestic purposes.

(q) *Sales of meals.* The sale of a meal consisting of any of the items defined as food products in subsection (m) hereof for consumption on the premises and for which the purchaser is charged a total of less than one dollar. The exemption provided herein shall apply to the total charge for

each such meal separately computed, whether the purchaser pays for meals other than his own, or not. The gross receipts from all such meals costing less than one dollar shall be exempt from the tax imposed by this chapter, provided the retailer claiming such exemptions shall maintain adequate records to support the same, otherwise such gross receipts shall be subject to the tax.

(r) *Production materials.* Sales of and the storage, use or other consumption of materials, rope, fishing nets, tools and fuel or any substitute thereof, but excluding machinery or replacement parts thereof used in production, which become an ingredient or component part of tangible personal property to be sold or which are consumed and used directly in agricultural production or in the fishing industry or in an industrial plant in the actual fabrication of the finished product to be sold. The word "machinery" as used herein shall mean the basic machine itself including all of its component parts and contrivances, such as belts, pulleys, shafts, moving parts, operating structures and all equipment or devices used or required to control regulate or operate the machinery. For the purpose of this subsection, the raising of poultry and livestock shall be construed to be included in the term "agricultural production." Sales of and the storage, use or other consumption of materials, tools and fuel or any substitute thereof, but excluding machinery or replacement parts thereof, when such products are used and consumed directly in the furnishing of power to an industrial manufacturing plant or in the furnishing of gas, water, steam or electricity when delivered to consumers through mains, lines or pipes.

(s) *Oxygen; blood plasma; prostheses.* Sales of oxygen, blood or blood plasma when sold for medical use; sales of artificial devices individually designed, constructed or altered solely for the use of a particular crippled person so as to become a brace, support, supplement, correction or substitute

for the bodily structure, including the extremities of the individual; sales of artificial limbs, artificial eyes and other equipment worn as a correction or substitute for any functioning portion of the body, and artificial hearing aids when designed to be worn on the person of the owner or user; sales of crutches and wheel chairs for the use of invalids and crippled persons.

(t) *Flyable aircraft and equipment.* Sales of and the storage, use or other consumption of flyable aircraft complete with necessary equipment and modifications, but not separate engines and parts thereof, sold to persons taking delivery and using such aircraft as certificated or licensed carriers of persons or property in interstate or foreign commerce under authority of the laws of the United States or any foreign government, or sold to any foreign government for use by such government outside of this state, or sold to persons who are not residents of this state and who will not use such aircraft in this state otherwise than in the removal of such aircraft from this state.

(u) *Personal property for incorporation into water treatment facilities.* Sales of and the storage, use or other consumption of tangible personal property acquired for incorporation into facilities for the treatment of industrial waste before the discharge thereof into any waters of the state or into any sewerage system emptying into such waters, the primary purpose of which is the reductions, control or elimination of pollution of such waters, certified as approved for such purpose by the water resources commission. For the purposes of this subdivision "industrial waste" means any harmful thermal effect or any liquid, gaseous or solid substance or combination thereof resulting from any process of industry, manufacture, trade or business or from the development or recovery of any natural resource.

(v) *Personal property for incorporation into air pollu-*

tion control facilities. Sales of and the storage, use or other consumption of tangible personal property acquired for incorporation into facilities, the primary purpose of which is the reduction, control or elimination of air pollution, certified as approved for such purpose by the air pollution control commission.

SEC. 12-413. *Exemptions from use tax.* (1) *Where sales tax applicable.* The storage, use or other consumption in this state of property, the gross receipts from the sale of which are required to be included in the measure of the sales tax, is exempted from the use tax.

(2) *Property purchased from United States.* The storage, use or other consumption in this state of property purchased from any incorporated agency or instrumentality of the United States, except (a) any property reported to the Surplus Property Board of the United States or any successor thereto, as surplus property by any owning agency; and (b) any property included in any contractor inventory, is exempted from the use tax. "Surplus property," "owning agency," and "contractor inventory" as used in this section have the meanings ascribed to them in that act of the Congress of the United States known as the "Surplus Property Act of 1944."

(3) *Purchase brought into state by resident.* The use tax shall not apply to the purchase of any articles of tangible personal property which have been brought into this state on the person of a resident of this state when the purchase price of the same does not exceed twenty-five dollars; provided such purchase shall be for personal use or consumption in this state and not for use in consumption in carrying on a trade, occupation, business or profession.

SEC. 12-414. *Returns and payments.* (1) *Due date.* The taxes imposed by this chapter are due and payable to the

commissioner quarterly on or before the last day of the month next succeeding each quarterly period. "Quarterly period" means a period of three calendar months commencing on the first day of January, April, July or October of each year or, if any seller commences business on a date other than the first day of January, April, July or October, a period beginning on the date of commencement of business and ending on December thirty-first, March thirty-first, June thirtieth or September thirtieth.

(2) *Return.* On or before the last day of the month following each quarterly period of three months, a return for the preceding quarterly period shall be filed with the commissioner in such form as the commissioner may prescribe. For purposes of the sales tax a return shall be filed by every seller. For purposes of the use tax a return shall be filed by every retailer engaged in business in the state and by every person purchasing tangible personal property, the storage, use or other consumption of which is subject to the use tax, who has not paid the use tax due a retailer required to collect the tax, except that every person making such purchases for personal use or consumption in this state, and not for use or consumption in carrying on a trade, occupation, business or profession, need file only one individual use tax return covering purchases during a calendar year. Such return shall be filed and the tax due thereon paid on or before the last day of the month succeeding the end of the calendar year for which such return is filed. Returns should be signed by the person required to file the return or by his authorized agent but need not be verified by oath.

(3) *Contents of return.* For purposes of the sales tax the return shall show the gross receipts of the seller during the preceding reporting period. For purposes of the use tax, in case of a return filed by a retailer, the return shall show the total sales price of the property sold by him, the storage, use or consumption of which property became subject to the use

tax during the preceding reporting period; in case of a return filed by a purchaser, the return shall show the total sales price of the property purchased by him, the storage, use or consumption of which became subject to the use tax during the preceding reporting period. The return shall also show the amount of the taxes for the period covered by the return in such manner as the commissioner may require and such other information as the commissioner deems necessary for the proper administration of this chapter. The tax commissioner is authorized in his discretion, for purposes of expediency, to permit returns to be filed in an alternative form wherein the person filing the return may elect to report his gross receipts, including the tax reimbursement to be collected as provided for herein, as a part of such gross receipts or to report his gross receipts exclusive of the tax collected in such cases where the gross receipts from sales have been segregated from tax collections. In the case of the former, ninety-six and six-tenths per cent of such gross income may be considered to be the gross receipts from sales exclusive of the taxes collected thereon.

(4) *Filing return.* Returns, together with the amount of the tax due thereon, shall be filed with the tax commissioner.

(5) *Return periods.* The commissioner, if he deems it necessary in order to insure payment to or facilitate the collection by the state of the amount of taxes, may require returns and payment of the amount of taxes for other than quarterly periods.

(6) *Extension of time.* The commissioner for good cause may extend the time for making any return and paying any amount required to be paid under this chapter, if a written request therefor is filed with the commissioner together with a tentative return which must be accompanied by a payment of the tax, which shall be estimated in such tentative

return, on or before the last day for filing the return. Any person to whom an extension is granted shall pay, in addition to the tax, interest at the rate of one-half of one per cent per month, or fraction thereof, from the date on which the tax would have been due without the extension until the date of payment.

SEC. 12-415. *Deficiency assessments.* (1) *Deficiency assessments.* If the commissioner is not satisfied with the return of the tax or the amount of tax required to be paid to the state by any person, he may compute and assess the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within his possession or that may come into his possession. One or more deficiency assessments may be made of the amount due for one or for more than one period.

(2) *Interest.* The amount of the assessment, exclusive of penalties, shall bear interest at the rate of one-half of one per cent per month, or fraction thereof, from the last day of the month succeeding the quarterly period for which the amount or any portion thereof should have been returned until the date of payment.

(3) *Offsets.* In making an assessment the commissioner may, in his discretion, offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for another period or periods, against penalties and against the interest on the underpayments. The interest on underpayments and overpayments shall be computed on the basis of one-half of one per cent per month, or fraction thereof, from the last day for the filing of the respective returns, but the allowance of interest on overpayments shall be limited to the provisions of this subsection and subsection (2) of section 12-416.

(4) *Ten per cent penalty.* If any part of the deficiency

for which a deficiency assessment is made is due to negligence or intentional disregard of this chapter or authorized regulations, a penalty of ten per cent of the amount of assessment shall be added thereto.

(5) *Twenty-five per cent penalty.* If any part of the deficiency for which an assessment is made is due to fraud or an intent to evade this chapter or authorized regulations, a penalty of twenty-five per cent of the amount of the assessment shall be added thereto.

(6) *Notice of assessment.* The commissioner shall give to the retailer or person storing, using or consuming tangible personal property written notice of his assessment. The notice may be served personally or by mail. If by mail, it shall be addressed to the retailer or person storing, using or consuming tangible personal property at his address as it appears in the records of the commissioner's office. In case of service by mail of any notice required by this chapter, the service is complete at the time of deposit in the United States post office or mail box.

(7) *Limitations; deficiency assessments.* Except in the case of fraud, intent to evade this chapter or authorized regulations, failure to make a return, or claim for additional amount pursuant to subsection (3) of section 12-418, every notice of a deficiency assessment shall be mailed within three years after the last day of the month following the quarterly period for which the amount is proposed to be assessed or within three years after the return is filed, whichever period expires later. The limitations specified in this subsection does not apply in case of a sales tax proposed to be assessed with respect to sales of property for the storage, use or other consumption of which notice of a deficiency assessment has been or is given pursuant to subsection (6) of this section, subsection (5) of section 12-416, subsection (2) of section 12-417 and this subsection. The limitation specified in this subsection

does not apply in case of an amount of use tax proposed to be assessed with respect to storage, use or other consumption of property for the sale of which notice of a deficiency assessment has been or is given pursuant to said subsections and this subsection.

(8) *Waiver.* If, before the expiration of the time prescribed in subsection (7) of this section for the mailing of a notice of deficiency determination, the taxpayer has consented in writing to the mailing of the notice after such time, the notice may be mailed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

SEC. 12-416. *Assessment if no return made.* (1) *Assessment; failure to file return.* If any person fails to make a return, the commissioner shall make an estimate of the amount of the gross receipts of the person or, as the case may be, of the amount of the total sales price of tangible personal property sold or purchased by the person, the storage, use or other consumption of which in this state is subject to the use tax. The estimate shall be made for the period or periods in respect to which the person failed to make a return and shall be based upon any information which is in the commissioner's possession or may come into his possession. Upon the basis of this estimate the commissioner shall compute and determine the amount required to be paid to the state, adding to the sum thus arrived at a penalty equal to ten per cent thereof. One or more assessments may be made for one or for more than one period.

(2) *Offsets.* In making an assessment the commissioner may, in his discretion offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for another period or periods, against penalties and against the interest on the underpayments. The interest on

underpayments and overpayments shall be computed on the basis of one-half of one per cent per month or fraction thereof from the last day for the filing of the respective returns.

(3) *Interest.* The amount of the assessment, exclusive of penalties, shall bear interest at the rate of one-half of one per cent per month, or fraction thereof, from the last day of the month succeeding the quarterly period for which the amount or any portion thereof should have been returned until the date of payment.

(4) *Penalties.* If the failure of any person to file a return is due to fraud or an intent to evade this chapter or regulations, a penalty of twenty-five per cent of the amount required to be paid by the person, exclusive of penalties, shall be added thereto in addition to the ten per cent penalty provided in subsection (1) of this section.

(5) *Notice of assessment.* Promptly after making his assessment the commissioner shall give to the person written notice of the estimate, assessment and penalty, the notice to be served personally or by mail in the manner prescribed for service of notice of a deficiency assessment.

SEC. 12-417. *Jeopardy assessments.* (1) *Jeopardy assessment.* If the commissioner believes that the collection of any tax or any amount of tax required to be collected and paid to the state or of any assessment will be jeopardized by delay, he shall thereupon make an assessment of the tax or amount of tax required to be collected, noting that fact upon the assessment. The amount assessed is immediately due and payable.

(2) *Interest and penalty.* If the amount specified in the assessment is not paid within ten days after service of notice thereof upon the person against whom the assessment is made, the amount becomes final at the expiration of the ten

days, unless a petition for reassessment is filed within the ten days, and the delinquency penalty and the interest provided in section 12-419 shall attach to the amount of the tax or the amount of the tax required to be collected.

(3) *Petition for reassessment; security.* The person against whom a jeopardy assessment is made may file a petition for the reassessment thereof, pursuant to section 12-418, with the commissioner within ten days after the service upon him of notice of the assessment. Such person shall also, within said ten-day period, deposit with the commissioner such security as the commissioner deems necessary to insure compliance with this chapter. The security may be sold by the commissioner in the manner prescribed by section 12-430.

Sec. 12-418. *Reassessments.* (1) *Petition for reassessment.* Any person against whom an assessment is made under section 12-415 or 12-416 or any person directly interested may petition for a reassessment within thirty days after service upon such person of notice thereof. If a petition for reassessment is not filed within the thirty-day period, the assessment becomes final at the expiration of the period.

(2) *Oral hearing.* If a petition for reassessment is filed within the thirty-day period, the commissioner shall reconsider the assessment and, if the person has so requested in his petition, shall, in his discretion, grant the person an oral hearing and shall give him ten days' notice of the time and place of the hearing. The commissioner may continue the hearing from time to time, as may be necessary, and may assign the conduct of such hearing to his representative.

(3) *Decrease or increase of assessment.* The commissioner may decrease or increase the amount of the assessment before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the commissioner at or before the hearing.

(4) *Finality date of order or decision.* The order or decision of the commissioner upon a petition for reassessment becomes final thirty days after service upon the petitioner of notice thereof.

(5) *Due date of assessment; penalty.* All assessments made by the commissioner under section 12-415 and 12-416 are due and payable at the time they become final. If they are not paid when due and payable, a penalty of ten per cent of the amount of the assessment, exclusive of interest and penalties, shall be added thereto.

(6) *Service of notice.* Any notice required by this section shall be served personally or by mail in the manner prescribed for service of notice of a deficiency assessment.

SEC. 12-419. *Interest and penalties.* Any person who fails to pay any tax to the state or any amount of tax required to be collected and paid to the state, except amounts of assessments made by the commissioner under sections 12-415 and 12-416, within the time required shall pay a penalty of five per cent of the tax or amount of the tax during the first fifteen days that such amount remains due and unpaid, which penalty shall be increased to ten per cent thereafter, in addition to the tax or amount of the tax, plus interest at the rate of one half of one per cent per month, or fraction thereof, from the date on which the tax or the amount of tax required to be collected became due and payable to the state until the date of payment.

SEC. 12-420. *Collection of taxes. Delinquent taxes.* The amount of any tax, penalty or interest due and unpaid under the provisions of this chapter may be collected under the provisions of section 12-35. The warrant therein provided for shall be signed by the commissioner or his authorized agent. The amount of any such tax, penalty and interest shall be a lien, from the last filing day of any quarterly period for

which the taxpayer is delinquent until discharged by payment, against all real estate of the taxpayer within the state, and a certificate of such lien signed by the commissioner may be filed for record in the office of the clerk of any town in which such real estate is situated, provided no such lien shall be effective as against any bona fide purchaser or encumbrancer of any interest in any such property to whom such property is transferred between the last day of such quarterly period and the date on which such lien is recorded. When any tax with respect to which a lien has been recorded under the provisions of this section has been satisfied, the commissioner, upon request of any interested party, shall issue a certificate discharging such lien, which certificate shall be recorded in the same office in which the lien was recorded. Any action for the foreclosure of such lien shall be brought by the attorney general in the name of the state in the superior court for the county in which the property subject to such lien is situated, or, if such property is located in two or more counties, in the superior court for any one such county and the court may limit the time for redemption or order the sale of such property or pass such other or further decree as it judges equitable.

SEC. 12-421. *Hearing by commissioner.* Any taxpayer, having paid any tax as provided by this chapter, aggrieved by the action of the commissioner or his authorized agent in fixing the amount of such tax or in imposing any penalty hereunder, may apply to the commissioner, in writing, within thirty days after the notice of such action is delivered or mailed to him, for a hearing and a correction of the amount of the tax or penalty so fixed, setting forth the reasons why such hearing should be granted and the amount in which such tax should be reduced. The commissioner shall promptly consider each such application and may grant or deny the hearing requested. If the hearing is denied, the applicant shall be notified thereof forthwith; if it is granted, the commissioner shall notify the

applicant of the time and place fixed for such hearing. After such hearing the commissioner may make such order in the premises as appears to him just and lawful and shall furnish a copy of such order to the applicant. The commissioner may, by notice in writing at any time within three years after the date when any return of any taxpayer has been due, order a hearing on his own initiative and require the taxpayer or any other individual whom he believes to be in possession of relevant information concerning the taxpayer to appear before him or his authorized agent with any specified books of account, papers or other documents, for examination under oath.

SEC. 12-422. *Appeal.* Any taxpayer aggrieved because of any order, decision, determination or disallowance of the tax commissioner under section 12-418, 12-421 or 12-425 may, within one month after service upon the taxpayer of notice of such order, decision, determination or disallowance, take an appeal therefrom to the superior court for Hartford county, which shall be accompanied by a citation to the tax commissioner to appear before said court. Such citation shall be signed by the same authority and such appeal shall be returnable at the same time and served and returned in the same manner, as is required in case of a summons in a civil action. The authority issuing the citation shall take from the appellant a bond or recognizance to the state of Connecticut, with surety to prosecute the appeal to effect and comply with the orders and decrees of the court in the premises. Such appeals shall be preferred cases, to be heard, unless cause appears to the contrary, at the first session, by the court or by a committee appointed by it. Said court may grant such relief as may be equitable and, if such tax has been paid prior to the granting of such relief, may order the treasurer to pay the amount of such relief, with interest at the rate of six per cent per annum, to the aggrieved taxpayer. If the appeal has been taken without probable cause, the court may tax double or triple costs, as the case demands; and, upon all such appeals which are

denied, costs may be taxed against the appellant at the discretion of the court, but no costs shall be taxed against the state.

SEC. 12-423. *Abatement of taxes.* When any tax assessed under the provisions of this chapter has been found to be uncollectible, such tax and penalty or interest assessed in connection therewith may be abated upon the advice of the attorney general. Upon such approval the commissioner of finance and control shall certify such abatement to the comptroller and treasurer, and an itemized statement of all such abatements shall be included in the published report of the commissioner of finance and control.

SEC. 12-424. *Payments on termination of business and successor's liability.* (1) *Withholding by purchaser.* If any retailer liable for any amount under this chapter sells out his business or stock of goods or quits the business, his successors or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the commissioner showing that it has been paid or a certificate stating that no amount is due.

(2) *Liability of purchaser; release.* If the purchaser of a business or stock of goods fails to withhold the purchase price as required, he becomes personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price, valued in money. Within sixty days after receiving a written request from the purchaser for a certificate, the commissioner shall either issue the certificate or mail notice to the purchaser at his address as it appears on the records of the commissioner of the amount that must be paid as a condition of issuing the certificate. Failure of the commissioner to mail the notice shall release the purchaser from any further obligation to withhold the purchase price as above provided. The time within which the obligation of the successor may be enforced shall start to run at the time the retailer sells out his business or stock of goods or at the time

that the assessment against the retailer becomes final, whichever event occurs later.

SEC. 12-425. *Overpayments and refunds.* (1) *Credits and refunds.* If the commissioner determines that any amount, penalty or interest has been paid more than once or has been erroneously or illegally collected or computed, the commissioner shall certify to the state treasurer the amount collected in excess of the amount legally due and the person from whom it was collected or by whom paid. If approved by the treasurer, the excess amount collected or paid shall be credited on any amounts then due and payable from the person under this chapter, and the balance shall be refunded, upon order of the comptroller, to the person or his successors, administrators or executors. Any overpayment of the use tax by a purchaser to a retailer who is required to collect the tax and who gives the purchaser a receipt therefor pursuant to this chapter shall be credited or refunded by the state to the purchaser.

(2) *Claim; limitation period.* No refund shall be allowed unless a claim therefor is filed with the commissioner within three years from the last day of the month succeeding the quarterly period for which the overpayment was made, or, with respect to assessments made under sections 12-415 and 12-416, within six months after the assessments become final, or within six months from the date of overpayment, whichever period expires later. No credit shall be allowed after the expiration of the period specified for filing claims for refund unless a claim for credit is filed with the commissioner within such period, or unless the credit relates to a period for which a waiver is given pursuant to subsection (8) of section 12-415.

(3) *Condition; sales tax reimbursment.* No credit or refund of any amount paid pursuant to section 12-411 shall be allowed on the ground that the storage, use or other consumption of the property is exempted under subsection (1) of sec-

tion 12-413, unless in addition to the overpayment for which the claim is filed the claimant also reimburses his vendor for the amount of the sales tax imposed upon his vendor with respect to the sale of the property and paid by the vendor to the state.

(4) *Form and content of claim.* Every claim shall be in writing and shall state the specific grounds upon which the claim is founded.

(5) *Effect of failure to file claim.* Failure to file a claim within the time prescribed in this section constitutes a waiver of any demand against the state on account of overpayment.

(6) *Notice of action on claim.* Within thirty days after disallowing any claim in whole or in part the commissioner shall serve notice of his action on the claimant in the manner prescribed for service of notice of a deficiency assessment.

SEC. 12-426. *Administration.* (1) *Enforcement by commissioner; regulations.* The commissioner shall enforce the provisions of this chapter and may adopt and enforce regulations relating to the administration and enforcement of this chapter. The commissioner may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

(2) *Employees and representatives of commissioner.* The commissioner may employ accountants, auditors, investigators, assistants and clerks necessary for the efficient administration of this chapter, in accordance with the provisions of chapter 63, and may designate representatives to conduct hearings or perform any other duties imposed by this chapter upon the commissioner.

(3) *Records.* Every seller, every retailer as defined in subdivision (b) of subsection (12) of section 12-407 and every

person storing, using or otherwise consuming in this state tangible personal property purchased from a retailer shall keep such records, receipts, invoices and other pertinent papers in such form as the commissioner requires.

(4) *Examination of records.* The commissioner or any person authorized by him may examine the books, papers, records and equipment of any person liable for the use tax, and may investigate the character of the business of the person in order to verify the accuracy of any return made or, if no return is made by the person, to ascertain and determine the amount required to be paid.

(5) *Reports relative to use tax liability.* In administration of the use tax the commissioner may require the filing of information reports by any person or class of persons having in his or their possession or custody information relating to sales of tangible personal property the storage, use or other consumption of which is subject to the tax. Such reports shall be filed when the commissioner requires and shall set forth the names and addresses of purchasers of the tangible personal property, the sales price of the property, the date of sale and such other information as the commissioner may require.

(6) *Divulging of information forbidden.* Neither the commissioner, his attorney or agent nor any other officer or employee engaged in the administration of this chapter shall make known in any manner whatever the business affairs, operations or information obtained by an investigation of records and equipment of any retailer or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any return, or permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person, except for purposes of photostating or microfilming;

provided the governor may, by general or special order, authorize examination of the returns by other state officers, by tax officers of another state, by the federal government, if a reciprocal arrangement exists or by any other person. Successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, may be given information as to the items included in the measure and amounts of any unpaid tax or amounts of tax required to be collected, interest and penalties. Any person who violates any provision of this subsection shall be fined not more than one thousand dollars.

SEC. 12-427. *Disposition of proceeds; refunds.* (1) *Settlement with treasurer.* All funds received by the tax commissioner under the provisions of this chapter shall be recorded with the comptroller and shall be deposited daily with the state treasurer. The commissioner shall issue his receipt to any taxpayer for any payment upon request.

(2) *Refunds to be made from general fund.* For the purpose of making any refund provided for in this chapter, the comptroller, upon certification of the tax commissioner and with the approval of the finance advisory committee, is authorized to draw upon the unappropriated surplus of the general fund.

(3) *Publication and disclosure of information.* The tax commissioner shall publish in his report, required under the provisions of section 4-60, data showing the amount of taxes and the amount of penalties, assessed under the provisions of this chapter, with such classifications of taxpayers, incomes and deductions and such other facts as he deems pertinent and valuable. Such published figures shall not disclose the operations of any taxpayer in such manner as to permit the identification of such taxpayer by those unassociated with his business. The commissioner shall, at least annually, and oftener in his discretion, publish for distribution all regulations pre-

scribed hereunder and such rulings and information as appear to him to be of general interest.

SEC. 12-428. *Violations.* (1) *Criminal penalties.* Any retailer or other person who fails or refuses to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the commissioner, or who renders a false or fraudulent return, shall be fined not more than five hundred dollars or imprisoned not more than thirty days or both for each offense.

(2) *Fraudulent returns.* Any person required to make, render, sign or verify any report who makes any false or fraudulent return, with intent to defeat or evade the assessment of an amount due, required by law to be made, shall for each offense be fined not less than three hundred dollars and not more than five thousand dollars, or be imprisoned for not more than one year or be both fined and imprisoned.

(3) *Violation of law.* Any person who violates any provision of this chapter, for which no other penalty is provided, shall be fined not more than five hundred dollars or imprisoned not more than one year or both.

SEC. 12-429. *Oaths and subpoenas.* The commissioner and any agent of the commissioner authorized to conduct any inquiry, investigation or hearing hereunder may administer oaths and take testimony under oath relative to the matter of inquiry or investigaion. At any hearing ordered by the commissioner, the commissioner or his agent authorized to conduct such hearing and having authority by law to issue such process may subpoena witnesses and require the production of books, papers and documents pertinent to such inquiry. No witness under subpoena authorized to be issued by the provisions of this chapter shall be excused from testifying or from producing books or papers on the ground that such testimony or the production of such books or other documentary evi-

dence would tend to incriminate him, but such evidence or the books or papers so produced shall not be used in any criminal proceeding against him. If any person disobeys such process or, having appeared in obedience thereto, refuses to answer any pertinent question put to him by the commissioner or his authorized agent, or to produce any books and papers pursuant thereto, the commissioner or such agent may apply to the superior court for the county wherein the taxpayer resides or wherein the business has been conducted, or to any judge of said court if the same is not in session, setting forth such disobedience to process or refusal to answer, and said court or such judge shall cite such person to appear before said court or such judge to answer such question or to produce such books and papers and, upon refusal so to do, shall commit such person to jail until he testifies, but not for a longer period than sixty days. Notwithstanding the serving of the term of such commitment by any person the commissioner may proceed in all respects with such inquiry and examination as if the witness had not previously been called upon to testify. Officers who serve subpoenas issued by the commissioner or under his authority and witnesses attending hearing conducted by him hereunder shall receive fees and compensation at the same rates as officers and witnesses in the courts of this state, to be paid on vouchers of the commissioner on order of the comptroller from the appropriation for the administration of this chapter.

SEC. 12-430. *Miscellaneous provisions.* (1) *Security for tax.* The commissioner, whenever he deems it necessary to insure compliance with this chapter, may require any person subject thereto to deposit with him such security as the commmissioner determines. The amount of the security shall be fixed by the commissioner but shall not be greater than twice the person's estimated average liability for the period for which he files returns, determined in such manner as the commissioner deems proper, or ten thou-

sand dollars, whichever amount is the lesser. The amount of the security may be increased or decreased by the commissioner subject to the limitations herein provided. The commissioner may sell the security at public auction if it becomes necessary so to do in order to recover any tax or any amount required to be collected, or any interest or penalty due. Notice of the sale may be served upon the person who deposited the security personally or by mail. If by mail, service shall be made in the manner prescribed for service of a notice of a deficiency assessment and shall be addressed to the person at his address as it appears in the records of the commissioner's office. Security in the form of a bearer bond, issued by the United States or the state of Connecticut, which has a prevailing market price may, however, be sold by the commissioner at private sale at a price not lower than the prevailing market price thereof. Upon any sale any surplus above the amounts due shall be returned to the person who deposited the security.

(2) *Penalty for delinquent filing of return.* In addition to the other penalty provided for in section 12-428, a penalty of two dollars and fifty cents shall be imposed upon each person required by this chapter to file a return when the same is filed subsequent to the last day of filing for each quarterly or other period. The commissioner, in his discretion and for due cause shown, may waive such penalty.

(3) *Evidence of tax on motor vehicles.* Each person before obtaining an original or transferral registration for a motor vehicle in this state shall furnish evidence that any tax due thereon pursuant to the provisions of this chapter has been paid in accordance with regulations prescribed by the tax commissioner, and on forms approved by the tax commissioner and the motor vehicle commissioner. The motor vehicle commissioner shall, upon the request of the tax commissioner, after hearing by the tax commissioner, suspend or

revoke a motor vehicle registration of any person who fails to pay any tax due in connection with the sale, storage, use or other consumption of such motor vehicle pursuant to the provisions of this chapter.

(4) *Trade-in of motor vehicles or farm tractors.* Where a trade-in of a motor vehicle is received by a motor vehicle dealer, licensed under the provisions of subdivision (D) of part III of chapter 246 and holding a valid seller's permit, upon the sale of another motor vehicle to a consumer, or where a trade-in of a farm tractor is received by retailer of farm tractors holding a valid seller's permit, upon the sale of another farm tractor to a consumer, the tax is only on the difference between the sale price of the motor vehicle or farm tractor purchased and the amount allowed on the motor vehicle or farm tractor traded in on such purchase. When any such motor vehicle or farm tractor traded in is subsequently sold to a consumer or user, the tax provided for in this chapter applies.

(5) *Payment of sales or use tax to another state.* If any article of tangible personal property has already been subjected to a sales or use tax by any other state or political subdivision thereof and payment made thereon in respect to its sale or use in an amount less than the tax imposed by this chapter, the provisions of this chapter shall apply, but at a rate measured by the difference, only, between the rate herein fixed and the rate by which the previous tax upon the sale or use was computed. If such tax imposed in such other state or political subdivision thereof is equivalent to or in excess of the rate imposed under this chapter at the time of such sale or use, then no tax shall be due on such article.

SEC. 12-431. *Tax on casual sales of motor vehicles, boats and airplanes.* In case of the purchase of any motor vehicle, boat or airplane other than from a licensed motor vehicle dealer or a dealer or retailer of boats or airplanes, the receipts

therefrom shall not be included in the measure of the sales tax, but the purchaser thereof shall pay a use tax on the total purchase price thereof to the tax commissioner, as provided in section 12-411, in the case of tangible personal property purchased from a retailer and, in the case of motor vehicles, before obtaining an original or transferral registration in accordance with regulations prescribed by the tax commissioner and on forms approved by the tax commissioner and the commissioner of motor vehicles; provided no use tax shall be payable in cases of transfer or purchase (a) when the transferee or purchaser is the spouse, mother, father, brother, sister or child of the seller or (b) when a motor vehicle is transferred or sold in connection with the organization, reorganization, dissolution or partial liquidation of an incorporated or unincorporated business, provided (1) the last taxable sale, transfer or use of the vehicle was subjected to a tax imposed by this chapter, (2) the tranferee is the incorporated or unincorporated business or a stockholder, owner, member or partner thereof and (3) any gain or loss to the transferor is not recognized for federal income tax purposes under the provisions of the Internal Revenue Code and treasury regulations and rulings issued thereunder.

SEC. 12-432. *Use of proceeds.* All proceeds of the tax collected under the provisions of this chapter shall be allocated to and expended for public health, welfare and education purposes only.

SEC. 12-432a. *Civil actions on sales solicited by catalogs.* No retailer, as defined in subsection (12) (d) of section 12-407, who fails to comply with the provisions of chapter 219 of the general statutes, as herein amended, shall maintain any action in law or equity in this state on any sale or transaction included under said subsection (12) (d).

78TH CONGRESS
2d Session
SENATE
REPORT
No. 959

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT AMENDMENT

JUNE 12 (legislative day, MAY 9, 1944. — Ordered to be printed

MR. BRIDGES, from the Committee on Military Affairs, submitted the following

REPORT

[To accompany H. R. 4733]

The Committee on Military Affairs, to whom was referred the bill, H. R. 4733, to amend section 514 of the Soldiers' and Sailors' Civil Relief Act, having considered the same, submit the following report thereon, with the recommendation that it do pass.

The purpose of the proposed legislation is to clarify the intent of section 514 of the Soldiers' and Sailors' Civil Relief Act as added by section 17 of the act of October 6, 1942 (56 Stat. 769, 777). When that provision of law was added to the act to relieve persons in service from liability of double taxation by being moved from one State to another under orders, it was intended that it should apply to personal-property taxes as well as to income taxes. As presently constituted, it primarily affects taxes in respect to income and other taxes based on residence or domicile, but it does not prevent the State of "temporary residence" from taxing tangible personal property actually located in such State so long as the tax does not depend on residence or domicile. A few States have taken the position that tangible personal property of military

personnel who are only temporarily within their jurisdiction does not acquire a situs for taxation, but it has been held that section 514 of the act as now written does not affect the right of a State to assess personal-property taxes on property within its jurisdiction. The result has been that servicemen find themselves at time subjected to personal-property taxes on the same property in more than one State during the same calendar year by reason of being moved under orders.

Your committee considers that the existing law pertaining to State taxation of the personal property of persons in military service present in the various States in compliance with military orders should be clarified; that the military personnel concerned should not be subjected to multiple taxation of personal property by the various States and should be given the same protection as to personal property taxes as is now provided in respect of income taxes.

Letter of the War Department follows:

WAR DEPARTMENT,
Washington, June 9, 1944.

HON. ROBERT R. REYNOLDS,
Chairman, Committee on Military Affairs,
United States Senate.

DEAR SENATOR REYNOLDS: The War Department has no objection to the enactment of H. R. 4733, Seventy-eighth Congress, an act to amend section 514 of the Soldiers' and Sailors' Relief Act.

The purpose of the proposed legislation is to prevent the multiple taxation of the personal property of military personnel by the various States, which it is understood was one of the purposes of section 514 of the Soldiers' and Sailors' Civil

Relief Act as added by the act of October 6, 1942 (56) Stat. 769, 777).

As presently worded, section 514 of the act primarily affects taxes in respect of income and other taxes based on residence or domicile. Nothing in that section prevents the State of "temporary residence" from taxing tangible personal property actually located in such State, so long as the tax does not depend on residence or domicile. A few States, however, have taken the position that tangible personal property of military personnel who are only temporarily within their jurisdictions does not acquire a situs for taxation.

The proposed legislation will not result in any additional cost to the Government.

The Bureau of the Budget advised with respect to a similar report on H. R. 4733 to the Committee on Military Affairs, House of Representatives, that there was no objection to its submission to the Congress.

Sincerely yours,

Secretary of War.
HENRY L. STIMSON,

The report of the House Military Affairs Committee (Rept. No. 1514) is appended hereto and made a part of this report.

[H. Rept. No. 1514, 78th Cong., 2d sess.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 4733) to amend section 514 of the Soldiers' and Sailors' Relief Act, having considered the same, submit the following report thereon, with the recommendation that it do pass with the following amendment:

Strike out all after the enacting clause and insert the following language:

"SEC. 514. (1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, political subdivision, or District: *Provided*, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to October 6, 1942."

"(2) When used in this section, (a) the term 'personal

property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect of motor vehicles or the use thereof, provided that the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid.

"SEC. 2. Nothing contained in this Act shall be construed to require the crediting or refunding of any tax in respect of tangible personal property (including licenses, fees, or excises imposed in respect of motor vehicles or the use thereof) paid prior to the date of its enactment."

GENERAL COMMENT

When the Soldiers' and Sailors' Civil Relief Act of 1940 was amended by the act of October 6, 1942, a provision was written into the act to relieve persons in the service from liability of double taxation by being moved from one State to another under orders. It was intended that this should apply to personal property taxes as well as income taxes. However, it has been held that under the wording of such amendment personal property taxes were not included. The result has been that servicemen find themselves at times subjected to personal property taxes in more than one State by reason of being moved under orders.

The purpose of the present act is to correct this situation and to give to the servicemen the same protection as to personal property taxes that they now have as to income taxes.

CHANGES IN EXISTING LAW

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, there follows the provisions of existing law and the changes proposed:

EXISTING LAW

SEC. 514. For the purposes of taxation in respect of any person, or of his property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while and solely by reason of being, so absent. For the purposes of taxation in respect of the income or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to the date of the enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942.

PROPOSED

SEC. 514. (1) The income, gross receipts, and personal property, tangible or intangible (including automotive vehicles), of any person in the military service shall not be subject to taxation by any State, Territory, possession, political subdivision thereof, or the District of Columbia, by reason of (a) his temporary residence, (b) receipt of income or gross recepits, or (c) the temporary location of personal property, within a State, Territory, possession, political subdivision

thereof, or the District of Columbia: *Provided,* That nothing contained in this section shall prevent the State, Territory, possession, political subdivision thereof, or the District of Columbia, wherein a person in the military service resided or was domiciled prior to the time when he first acquired a temporary residence, as defined herein, from imposing a tax upon the income, gross receipts, or personal property of such persons, if it otherwise has jurisdiction to impose such tax: *And provided further,* That nothing contained in this section shall prevent a State, Territory, possession, political subdivision thereof, or the District of Columbia from imposing taxes upon income or gross receipts, other than compensation for military service, derived from sources therein, nor from imposing a tax on personal property situated therein other than at a temporary location, as herein defined.

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PROPOSED

(2) After the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, no State, Territory, possession, political subdivision thereof, or the District of Columbia shall make claim for, collect, or receive from any person in the military service any tax made inapplicable by subsection (1) hereof and which has accrued subsequent to the declaration of the national emergency made by the President on September 8, 1939; but the refund of taxes collected or received prior to such effective date shall not be required by the provisions of this section.

(3) This section shall not be deemed in any manner to authorize any State, Territory, possession, political subdivision thereof, or the District of Columbia to impose any tax upon personal property located in or on any Federal area.

(4) (a) When after September 8, 1939, a person in the

military service has changed his physical residence in order to comply with military orders he shall be deemed to have acquired a "temporary residence"; except that for purposes of taxation by a State, Territory, possession, or the District of Columbia he shall be deemed to have acquired a "temporary residence" only if he shall have moved outside the exterior boundaries of such State, Territory, possession, or the District of Columbia.

(b) Personal property shall be deemed to have a "temporary location" when a person in the military service has such property at his "temporary residence" or when, on changing from one "temporary residence" to another, he leaves it at a previous "temporary residence."

(c) The term "Federal area" means any lands or premises owned or acquired by or for the use of the United States or any department, establishment, or agency of the United States.

The amendment proposed by the committee as compared to existing law is as follows (matter in which no change is proposed is shown in roman; matter proposed to be omitted is shown in black brackets; new matter is prinited in italics):

"SEC. 514. (1) For the purposes of taxation in respect of any person, or of his *personal* property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while,

and solely by reason of being, so absent. For the purposes of taxation in respect of the *personal property*, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and *personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, political subdivision, or District: Provided, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction.* This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to [the date of the enactment of the Soldiers' and Sailors' Civil Relief Act amendment of 1942."] *October 6, 1942.*

"(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect of motor vehicles or the use thereof, provided that the license, fee or excise required by the State, Territory, possession or District of Columbia of which the person is a resident or in which he is domiciled has been paid."

SEC. 2. *Nothing contained in this Act shall be construed to require the crediting or refunding of any tax in respect of tangible personal property (including licenses, fees or excises imposed in respect of motor vehicles or the use thereof) paid prior to the date of its enactment.*

78TH CONGRESS
2d Session

REPORT
No. 1514

HOUSE OF REPRESENTATIVES

AMENDING SECTION 514 OF THE SOLDIERS' AND SAILORS' RELIEF ACT

MAY 25, 1944. — Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

MR. SPARKMAN, from the Committee on Military Affairs, submitted the following

REPORT

[To accompany H. R. 4733]

The Committee on Military Affairs, to whom was referred the bill (H. R. 4733) to amend section 514 of the Soldiers' and Sailors' Relief Act, having considered the same, submit the following report the eon, with the recommendation that it do pass with the following amendment:

Strike out all after the enacting clause and insert the following language:

SEC. 514. (1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or

domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, political subdivision, or District: *Provided*, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to October 6, 1942.

(2) When used in this section, (a) the term "personal property" shall include tangible and intangible property (including motor vehicles), and (b) the term "taxation" shall include but not be limited to licenses, fees, or excises imposed in respect of motor vehicles or the use thereof, provided that the license, fee or excise required by the State, Territory, possession or District of Columbia of which the person is a resident or in which he is domiciled has been paid.

SEC. 2. Nothing contained in this Act shall be construed to require the crediting or refunding of any tax in respect of tangible personal property (including licenses, fees or excises imposed in respect of motor vehicles or the use thereof) paid prior to the date of its enactment.

General Comment

When the Soldiers' and Sailors' Civil Relief Act of 1940 was amended by the act of October 6, 1942, a provision was written into the act to relieve persons in the service from liability of double taxation by being moved from one State to another under orders. It was intended that this should apply to personal property taxes as well as income taxes. However, it has been held that under the wording of such amendment personal property taxes were not included. The result has been that servicemen find themselves at times subjected to personal property taxes in more than one State by reason of being moved under orders.

The purpose of the present act is to correct this situation and to give to the servicemen the same protection as to personal property taxes that they now have as income taxes.

Changes in Existing Law

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, there follows the provisions of existing law and the changes proposed:

Existing Law

Sec. 514. For the purposes of taxation in respect of any person, or of his property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the

foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the income or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District. This section shall be effective as of September 8, 1939, except that its shall not require the crediting or refunding of any tax paid prior to the date of the enactment of the Soldiers' and Sailors' Civil Relief Act amendments of 1942.

PROPOSED

SEC. 514. (1) The income, gross receipts, and personal property, tangible or intangible (including automotive vehicles), of any person in the military service shall not be subject to taxation by any State, Territory, possession, political subdivision thereof, or the District of Columbia, by reason of (a) his temporary residence, (b) receipt of income or gross receipts, or (c) the temporary location of personal property, within a State, Territory, possession, political subdivision thereof, or the District of Columbia: *Provided*, That nothing contained in this section shall prevent the State, Territory, possession, political subdivision thereof, or the District of Columbia, wherein a person in the military service resided or was domiciled prior to the time when he first acquired a temporary residence, as defined herein, from imposing a tax upon the income, gross receipts, or personal property of such persons, if it otherwise has jurisdiction to impose such tax: *And provided further*, That nothing contained in this section shall prevent a State, Territory, possession, political subdivision thereof, or the District of Columbia from imposing taxes upon income or gross receipts, other than compensation for

military service, derived from sources therein, nor from imposing a tax on personal property situated therein other than at a temporary location, as herein defined.

(2) After the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, no State, Territory, possession, political subdivision thereof, or the District of Columbia shall make claim for, collect, or receive from any person in the military service any tax made inapplicable by subsection (1) hereof and which has accrued subsequent to the declaration of the national emergency made by the President on September 8, 1939; but the refund of taxes collected or received prior to such effective date shall not be required by the provisions of this section.

(3) This section shall not be deemed in any manner to authorize any State, Territory, possession, political subdivision thereof, or the District of Columbia to impose any tax upon personal property located in or on any Federal area.

(4) (a) When after September 8, 1939, a person in the military service has changed his physical residence in order to comply with military orders he shall be deemed to have acquired a "temporary residence"; except that for purposes of taxation by a State, Territory, possession, or the District of Columbia he shall be deemed to have acquired a "temporary residence" only if he shall have moved outside the exterior boundaries of such State, Territory, possession, or the District of Columbia.

(b) Personal property shall be deemed to have a "temporary location" when a person in the military service has such property at his "temporary residence" or when, on changing from one "temporary residence" to another, he leaves it at a previous "temporary residence."

(c) The term "Federal area" means any lands or prem-

ises owned or acquired by or for the use of the United States or any department, establishment, or agency of the United States.

The amendment proposed by the committee as compared to existing law is as follows (matter in which no change is proposed is shown in roman; matter proposed to be omitted is shown in black brackets; new matter is printed in italics):

"SEC. 514. (1) For the purposes of taxation in respect of any person, or of his *personal* property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being so absent. For the purposes of taxation in respect of the *personal property*, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, *and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, political subdivision, or District: Provided, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in*

or arising from a trade or business, if it otherwise has jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to [the date of the enactment of the Soldiers' and Sailors' Civil Relief Act amendment of 1942."] October 6, 1942.—

"(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect of motor vehicles or the use thereof, provided that the license, fee or excise required by the State, Territory, possession or District of Columbia of which the person is a resident or in which he is domiciled has been paid."

SEC. 2. Nothing contained in this Act shall be construed to require the crediting or refunding of any tax in respect of tangible personal property (including licenses, fees or excises imposed in respect of motor vehicles or the use thereof) paid prior to the date of its enactment.